L.1.e.4.

Jus Parliamentarium:

OR, THE

ANCIENT POWER, JURISDICTION, RIGHTS and LIBERTIES,

OF THE

MOST HIGH COURT OF PARLIAMENT,

REVIVED and ASSERTED.

In Two Parts.

BY

WILLIAM PETYT, Esq;

Late of the Inner-Temple, and Keeper of the Records in the Tower of *LONDON*.

LONDON,

Printed for and Sold by John Nourse, at the *Lamb* without *Temple Bar*; M. Green, at *Charing Cross*; Cæsar Ward, and Richard Chandler, at the *Ship* without *Temple Bar*, and at their Shops in *Coney Street*, *York*, and at *Scarborough Spaw*; George Hawkins, at *Milton's Head* between the *Temple Gates* in *Fleet Street*, and at *Tunbridge Wells*; and Thomas Waller, in the *Middle Temple Cloysters*. MDCCXXXIX.

A

ANCIENT POWER,

OR THE

PRINCIPLES and PRACTICE

OF

ARISTOCRACY:



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TO THE

High Puiſſant and moſt Noble PRINCE

CHARLES

Duke of SOMERSET,

Earl of *Hertford*, Viſcount and Baron *Beauchamp* of *Hacche*, Baron *Seymour*, and Baron *Seymour* of *Troubridge*, Lord of the Honours of *Cockermouth* and *Petworth*, Chancellor of the Univerſity of *Cambridge*, one of His Majeſty's moſt Honourable Privy Council, one of the Governors of the *Charter-Houſe*, and Knight of the Moſt Noble Order of the Garter.

May it pleaſe your GRACE,

ALL Men, who know any Thing of the Hiſtory of *England*, know that your Country is highly indebted to your Grace, and your illuſtrious Anceſtors for its Religion and Liberty. A Royal Lady of the Family of SEYMOUR, gave us our firſt Proteſtant King: and in his ſhort Reign, notwithſtanding his Minority,

nority, the Reformation took deep Root, by the Care and Courage of his Uncle and Protector, one of your Grace's glorious Forefathers.

To attempt to enumerate the great Actions of that Duke of SOMERSET, and of the other Heroes of your Grace's moſt noble Houſe, would be injurious to their Fame, unleſs I had ſate down to write a copious Hiſtory of the Kingdom: and that Detail is the leſs neceſſary at preſent, becauſe the World ſees the Beauties of their Characters copied and improved in your Grace's Conduct.

In thoſe Times of Difficulty and Danger which you have ſeen, your Grace has been reſolved and unmoved; your Zeal for the Conſtitution has gained you the hearty Affection of all good *Engliſhmen*; as your princely Dignities and Fortunes, which your Grace ſo well knows how to enjoy, command their Reſpect and Reverence.

Editors of poſthumous Works, have immemorially claimed a Right to chuſe proper Patrons for them; permit me therefore, GREAT SIR, to offer to your Protection the following excellent Treatiſe written in Defence of our happy Conſtitution; and to ſubſcribe my ſelf, may it pleaſe your GRACE,

Your GRACE's *moſt humble,*

moſt obedient, and

moſt devoted Servant,

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Richard Williams, *Eſq.*

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THE

PREFACE.

THE following Treatiſe was compiled by WILLIAM PETYT *late of the* Inner Temple *Eſq; deceaſed, and Keeper of the Records in the Tower of* London: *An Office to which he was deſervedly advanced for his indefatigable Enquiries, and uncommon Penetration into the Knowledge of our ancient Records and legal Antiquities; more particularly thoſe which give a true Idea of the Frame and Conſtitution of this limited Monarchy: A Government which conſiſts in the Execution of Laws dictated by Reaſon and Experience, and receiving their binding Force from the Conſent of the People governed; not flowing from, or depending upon the miſinformed Judgment, or capricious Will of One, or a few.*

This Courſe of Reading (which was our Author's favourite Employment) naturally centered in the Study of ſuch Records as relate to the Antiquity, Nature, Power, Rights, and Privileges of both the Houſes of Parliament: Conſequently he was to conſider thoſe which might be uſeful in the Solution of ſeveral incidental Queſtions, agitated in his Time with much Warmth: viz. *Whether the King had a Power to diſpenſe with the Law, Common or Statute †? and whether, and in what Caſes, Liberty of Speech* in Parliament *was cognizable and puniſhable* out of Parliament?

† *This Power is condemned by the Bill of Rights,* 1 Will. & Mar.

PREFACE.

In Part of Mr. PETYT's *Time, the Diſpenſing Power was boldly advanced by the Flatterers at Court, and ſteadily and ſucceſsfully repelled by the Free People of* England: *Repelled ſo unanimouſly! that a rich King, whoſe Title to the Crown was not controverted, but on the contrary, within a little Time before, recognized with the ſtrongeſt Expreſſions of Duty and Affection by every County, City, and Borough in* England; *whoſe Commiſſions gave being to the Militia throughout the Realm; whoſe Fleet and Army reſpectively were of Force ſuperior to thoſe of the Invader; repelled, I ſay, unanimouſly! that this King was in a full Convention of the Eſtates of the Kingdom declared to have abdicated the Government, and that his Throne was thereby vacant; ſcarce a Town having ſhut its Gates; or County having arrayed its Militia; not one Ship of War nor Regiment having engaged in Fight, on his behalf. Thus this impotent arbitrary Prince was obliged to leave his vaſt Treaſure and royal annual Revenue behind; to live an Exile in a foreign Court, and long afterwards to owe his daily Bread to the Bounty of that Neighbour, whoſe Friendſhip and Example had ſuggeſted and promoted the deſtructive Counſels and Attempts which gave occaſion for this wonderful Revolution. There he lived, to behold the cleareſt Evidence of the Errors of his Conduct: He ſaw the true Political* Engliſh *Conſtitution, by its own due Poize, reſettle itſelf upon its ancient Baſis, the Law of the Land. A modern* French *Writer, remarking to this purpoſe upon the Misfortunes of ſome of our ill-adviſed Monarchs, ſays, that* an ENGLISH King is a Prince always tottering, upon a Throne never to be ſhaken.

Some publick Tranſactions and political Views towards the latter end of King Charles *the Second, and in the Reign of King* James *the Second, are proper to be remembered, the better to diſcover the principal Reaſon why our Author applied himſelf to this Branch of Reading. In the former of theſe Reigns, ſome Men who had more Learning than Honeſty*

neſly (in order to gain Favour at Court) proſtituted their Pens in Subverſion of the Rights of the Subject: **Sir* Robert Filmer *wrote againſt the Notion,* †*That Government is founded upon Compact:* ‡*Sir* George Mac Kenzie *wrote for Unlimited Paſſive Obedience, and againſt the Lawfulneſs of altering or limiting the Succeſſion by Authority of Parliament,* &c. *and* ‡*Sir* Roger L'Eſtrange, *in weekly Libels againſt the Conſtitution, maintained every Poſition that could tend to enſlave his Country and deſtroy the Rights of Mankind: To which add Dr.* Brady, *and many others of the Stamp.*

On the other hand, the Commons, in the Parliaments called about that Time, were diſſatisfied with the Adminiſtration of Affairs: They were therefore unwilling to give Treaſure as faſt as it was miſapplied, and complained of the Influence of French *Counſels without doors. Theſe Complaints were propagated and ſupported by the Pens of ſeveral able Writers; ſome of them Men of Wit and Raillery, others of cloſe ſerious Reaſoning: Then it was that the Body of Mercenaries undertook to maintain ſeveral extraordinary Points; they would prove, That the Laws are the King's Laws; that from him they receive their binding Force; that Parliaments owe their very Eſſence to the Royal Favours; that they are only for Counſel; that they are not very ancient; that the Commons were not anciently a conſtituent Part of Parliaments; with many other Doctrines of the like miſchievous Tendency. Some of the Judges of the Land were alſo too complying with whatever they underſtood to be the Pleaſure of the Prince: The Court of* King's Bench *undertook to reſtrain the Liberty of the Preſs, by Rule of Court; ſuppreſſed a Preſentment made by the Grand Jury; brought* Fitzharris

* PATRIARCHA.

† *The Truth of this Doctrine is aſſerted in the Vote of Abdication.*

† JUS REGIUM.

‡ OBSERVATORS.

See our Author's Dedication to the Earl of Eſſex, *prefixed to* The ancient Right of the Commons of ENGLAND aſſerted, *&c.*

to

to his Trial, while he was under an Impeachment of the Houſe of Commons, before the Lords in Parliament, for a myſterious Piece of Treaſon; with other Acts of Power, which by the Country Party of that Time were held illegal and arbitrary.

In the ſucceeding Reign, Matters grew much worſe: The Diſpenſing Power ſolemnly argued, and judicially affirmed in Weſtminſter Hall, *was carried into Execution in Caſes of the greateſt Notoriety and Importance, ſo as at once to repeal all the Laws for the Eſtabliſhment and Preſervation of Religion: And the Fathers of the Church were made to anſwer as Criminals, for having in private preſented a Petition (as bound by their Duty) againſt ſuch illegal Proceedings.*

In Times like theſe, our Author (doubtleſs to the Diminution of his private Profit) earneſtly applied himſelf to ſearch out the ſureſt Evidence concerning ſeveral of the Queſtions then in Debate. There are already two ſmall Volumes of his in Print; one intituled, The ancient Right of the Commons of ENGLAND aſſerted, *&c. the other,* Miſcellanea Parliamentaria, *&c. both publiſhed in his Life time. What the Reader now receives was his* Opus Magnum, *his Great, choice, and laſt Work: He had prepared it for the Preſs, as appears by the* INTRODUCTION; *and as he ſurvived the Reign of King* James *the Second, he would doubtleſs have printed it, if Death had not prevented him. 'Tis probable, that, as more Matter occurred to him, he continued to enlarge this Treatiſe; for, there is a fair Copy of Part of it in the Library of the* Inner-Temple, *as of an entire Work; but it wants one hundred Pages of our* Firſt, *and all our* Second *Part; which therefore (we may reaſonably conjecture) were compiled after that Copy was taken. Our Author's Collection of Records is appoſite to his Purpoſe; his Reaſoning upon them is generally ſtrong and concluſive; his Authorities are of the beſt Kind, approved Hiſtorians and Law Writers, but more eſpecially* Statutes *and* Rolls *of Parliament. In the Progreſs of his Work, he ſets the Antiquity and Conſtitution of*

our

our Parliaments in a clear Light: inſomuch that this Treatiſe, beyond any other that has been publiſhed, explains that Law, (the Law of Parliament) which, as Lord Coke *tells us, is known but to few.*

Our Author, in his INTRODUCTION, *ſets out with the Opinions of ſome very great Men concerning the Excellence of our Conſtitution above Abſolute Monarchies.*

In his Firſt *Chapter, he ſhews the Authority of Parliament in determining Queſtions new, weighty, or difficult; and incidentally proves that Parliaments were formerly annual; and that the Commons were a Part of them.*

The Second *Chapter contains Inſtances where the Judges adjourned Matters into Parliament, becauſe of Difficulty; and* ex conſequenti, & inconvenienti, *he concludes, that* Pag. 29, 30. *the Twelve Judges cannot by any Reſolution of theirs, make any new Precedent in Matters which concern the fundamental Conſtitution of the Government, and the general State of the whole Kingdom.*

The Third *Chapter is a Purſuit of the ſame Topick, with ſome little Variation: It is to prove from Precedents, that the Judges in* Weſtminſter Hall *are not by Interpretation to ſet aſide an Award in Parliament. He all along obſerves, that the Commons made a Part of the Eſtates of Parliament; and in this Chapter he gives his Opinion who were the Perſons that compoſed* the Council *ſo often mentioned in Law-* 38, 39. *Books.*

The Fourth *Chapter in the main purſues the ſame Argument; being to ſhew, that Doubts in Law of great Importance were to be ſettled by the Legiſlature, and not by the Judges: And of this he produces ſeveral notable Inſtances.*

In the Fifth, *he ſhews, that the Judges are not by Conſtruction to ſupply Defects or Doubts upon Acts of Parliament; but that the Legiſlature will provide additional explanatory Acts. And he makes a Latitude of Conſtruction by* 66. *the Judges ridiculous enough, by a Quotation from Lord* Elleſmere.

PREFACE.

The Neceſſity there was to have recourſe to the Authority of the Legiſlature, for the Amendment of Records and Jeofailes (which is ſhewn in the Sixth *Chapter) ſeems to go a great way towards the Proof of the Doctrine, that the Judges in* Weſtminſter Hall, *in Matters new and difficult, are to wait for the Aid of Parliament; and are not to undertake the Amendment of the Law by their own Authority: A Doctrine, which doubtleſs contributes much to the Security of the Rights of a free People; and which is not to be met with even in* Idea, *under any Arbitrary Government. This juſtifies that pathetick Remark,* 'Tis a miſerable State of Slavery, when the Law is uncertain or unknown.

The Seventh *Chapter, againſt* Non Obſtantes, *ſhews them to have been a novel Invention in* England *in the Time of King* Henry *the Third; that they were about that Time imported from the Court of* Rome, *and were eagerly adopted by that arbitrary Prince. Our Author here rightly obſerves, that Statutes which give the Crown a Power to diſpenſe with former Statutes, or with themſelves, are a ſufficient Proof that there is not a Diſpenſing Power in the Crown. This Chapter alſo contains Inſtances from the Rolls of Parliament, in early Times, of noble Efforts againſt a foreign Introduction. The ancient Courſe of Parliament in making Laws, is here explained; with the Time and Reaſon, when, and why it was altered. Our Author likewiſe gives us the Tranſactions concerning the Marriage-Treaty,* &c. *of our Queen* Mary *the Firſt with* Philip *of* Spain, *pretty much at large; but this he thought neceſſary, in order to make a proper Uſe of them, to diſprove the Legality of the Diſpenſing Power. He may be thought prolix concerning the King's Power of appointing Sheriffs for a longer Time than one Year: But when the Reader weighs his Reaſonings, he will ſee the Occaſion for ſtating the Progreſs of that Matter; the rather, becauſe* four or five of his Parliamentary Authorities had been ſuppreſſed in the common Editions of the Statute-Book. *The Argument againſt* Non Obſtantes, *drawn from*

Pag. 104, &c.
119, &c.
136, &c.
149, 151.
152.

the

the Statute ſettling the Precedency of the Peerage and great Officers of the Crown, is curious as well as concluſive; in which, I think, he has the better of our Oracle of the Law. Pag. 170.

The Diſtinction between malum in ſe *and* malum prohibitum, *is uſed in expounding the Law in many Caſes; therefore is fit to be attended to, with the Reaſons againſt it.* 176.

This Chapter is of an extraordinary Length; as being written with a Deſign to refute that deſtructive Doctrine of the Diſpenſing Power, which would in reality make the Laws, the Laws of the King, and not of the Kingdom. 178.

The next Chapter contains an Impeachment of a Great Chancellor, who was firſt Miniſter, (among other Things) for diſpenſing with the Law.

The following Chapter ſeems intended as a natural Purſuit of the ſame Argument: For, as the Diſpenſing Power had, in our Author's Time, received the Sanction of a judicial Determination in its Favour, it ſeemed proper to ſhew that Judges may err, and have erred corruptly; and have been ſeverely puniſhed for it, by the ſuperior Power of Parliament. Here therefore we have a remarkable Inſtance of the Crime, and the Puniſhment: Their Crime was, endeavouring, by their extrajudicial Reſolutions, to undermine the Authority of Parliament; and to bring Men within the Danger of High Treaſon, for obtaining an Act of Parliament from the King in his Minority; which Act theſe Judges, and other great Men of their Confederacy, held to be derogatory from the Regal Power: Their Crime was in Parliament adjudged High Treaſon, and ſome of them were executed accordingly; ſome met with milder Cenſures, and others ſaved themſelves by Flight. Here we ſee that, blinded by Avarice and Ambition, Judges have become Legicides: The Danger of that Crime is inſtanced in the Fates of Le Spencer, Thorpe, Treſilian, *&c.* Empſon *and* Dudley. *Our Author applauds the Conſtancy of the Judges under Queen* Elizabeth, *who apologized for themſelves (among other Reaſons) by the Terror of thoſe Examples. He ſeverely enough cenſures the Time-*

197, 198.

184, 196.

211.

207.

ſerving

ſerving of another great Man, by imputing it to a Decay of
Pag. 201. *his Underſtanding. He teaches, that there may be Treaſon againſt the Laws; and, with a due Deference to our Monarchy, ſhews, That the King can do no Wrong; but may be miſinformed, or deceived, or give illegal Commands, which*
210, 211. *are void by juſt Prerogative; but that his Miſinformers and the Actors are to be puniſhed.*

The Ninth *Chapter contains Articles of Impeachment of High and notable Offences (or, as they are now called, High Crimes and Miſdemeanors) againſt Cardinal* Wolſey: *But we do not here find any Judgment. Some of our Hiſtorians ſeem to think he was condemned in a* Premunire; *of which, undoubtedly, he had been guilty. This great Man's Fall ought to make every Primier Miniſter reflect, and aſk himſelf, How many ſincere Friends he could chuſe out from among ſome hundreds of humble Servants at his Levee.*

The Apology of the Houſe of Commons to King James *the Firſt, touching their Privileges (taken from the Journals of*
227. *the Houſe) is a curious Piece; drawn up with Reaſon and good Manners, without Harſhneſs of Style or Bitterneſs of Spirit, which too often abound in the publick Acts, when there has been a Miſunderſtanding between King and People. It was a great Misfortune to theſe Kingdoms, that the Voice of the Charmer could not be heard, charming ſo wiſely. The Neglect of theſe ſober Repreſentations ſowered the Minds of Men, ſo that they bred up their Children with jealous and diſaffected Notions even of the Kingly Power itſelf: While, on the other Hand, the Stateſmen never took care to mend Matters, but rather made them worſe; as not believing that the Power, which they found themſelves poſſeſſed of, was capable of Diminution: They never thought of the terrible Account to which they were afterwards called.*

The SECOND PART *contains an Account of Invaſions upon*
245, &c. *the Liberty of Speech in Parliament in ſeveral Reigns, ending in the Time of King* Charles *the Firſt. There are broken*

Notes

Notes from the Journals of the Commons, in the Time of King James *the First, which though they do not give a perfect Debate, yet ſerve to inform the Reader what was in Subſtance urged and relied on by the ſeveral Members who ſpoke.*

The Book concludes with an excellent Argument againſt the Legality of impoſing any Tax, &c. *without Authority of Parliament; and indeed whoever conſiders the great Variety of arbitrary and illegal Projects and Attempts of Impoſitions in the Reign of King* James *the Firſt, will eaſily perceive, that he ſowed the Seed of all thoſe Misfortunes which his Son reaped in ſuch great Abundance. When the People were for a long time debarred of their Rights and Properties, and had broke through Forms to recover them, it was too natural for them not to reſt ſatisfied with their own: Beſides, that great Advantages were thereby given to artful ambitious Men to cover their foul Deſigns, and effect their wicked Purpoſes, under the Appearance of the Publick Good.* Pag. 336, &c.

I ſhall conclude this Preface *with a Reflection of the Noble Hiſtorian, more rational and more nervous than all that ever was ſaid or written beſides, upon the occaſion of the infamous Judgment for Ship-money; and which his Detractors have never (that I have met with) done him the Juſtice to remember. His Words are as follow:* Hiſtory of the Rebellion, *Vol.* 1. *pag* 55. Oxford *Edit.* 1704.

" *—— And here the Damage and Miſchief cannot be ex-*
" *preſſed, that the Crown and State ſuſtained by the deſerved*
" *Reproach and Infamy that attended the Judges, by being*
" *made uſe of in this, and like Acts of Power; there being*
" *no Poſſibility to preſerve the Dignity, Reverence, and Eſti-*
" *mation of the Laws themſelves, but by the Integrity and*
" *Innocency of the Judges. And no Queſtion, as the Ex-*
" *orbitancy of the Houſe of Commons, in the next Parlia-*
" *ment, proceeded principally from their Contempt of the*
" *Laws, and that Contempt from the Scandal of that Judg-*
" *ment; ſo the Concurrence of the Houſe of Peers in that*
" *Fury, can be imputed to no one thing more, than to the*

" *Irreverence and Scorn the Judges were juſtly in; who had*
" *been always before looked upon there as the Oracles of the*
" *Law, and the beſt Guides to aſſiſt that Houſe in their Opi-*
" *nions and Actions: And the Lords now thought themſelves*
" *excuſed for ſwerving from the Rules and Cuſtoms of their*
" *Predeceſſors (who in altering and making of Laws, in*
" *judging of Things and Perſons, had always obſerved the*
" *Advice and Judgment of thoſe Sages) in not aſking Que-*
" *ſtions of thoſe, whom they knew no body would believe;*
" *thinking it a juſt Reproach upon them (who out of their*
" *Courtſhip had ſubmitted the Difficulties, and Myſteries of*
" *the Law, to be meaſured by the Standard of what they*
" *called General Reaſon, and explained by the Wiſdom of*
" *State) that they themſelves ſhould make uſe of the Licence,*
" *which the others had taught them, and determine that to*
" *be Law, which they thought to be reaſonable, or found to*
" *be convenient.*

" *If theſe Men had preſerved the Simplicity of their An-*
" *ceſtors, in ſeverely and ſtrictly defending the Laws, other*
" *Men had obſerved the Modeſty of theirs, in humbly and*
" *dutifully obeying them.*"

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AN

AN

INTRODUCTION.

WE are told by the reverend and pious Author of the *Whole Duty of Man*, that "Flattery "is such a Mystery, such a Riddle of Iniquity, "that its very Softnesses are its cruelest Rigour, its Balm "corrodes, and to comprise all in the Psalmist's excellent "Description, its *Words are smoother than Oil, and yet be* "*they very Swords.*

The Government of the Tongue, by the Author of the Whole Duty of Man, *the fourth Impression*, §. 8. p. 134, &c.

"'Tis indeed a collective, accumulative Baseness, it be-"ing in its Elements a Compound and a Complex of the "most sordid hateful Qualities incident to Mankind."

And he instances in three, *viz.*

"1. Lying,

"2. Servility,

"3. And Treachery;

"which being detestably deformed single, must in Con-"junction make up a loathsome monstrous Guilt."

And first he saith, "We may take Lying to be the very "Corner-Stone of the Fabrick, for take it away, and the "whole falls to the Ground.

"* A Parasite would make but a lean Trade of it, that "should confine himself to Truth.

"It is indeed strange to consider with what gross im-"pudent Falshoods Men of this Trade will court their "Patrons.

* Assentatores non quæ conducunt, sed quæ Principi placent ac grata sunt, consulunt. Hinc vulgari, sed minimum vero proverbio jactatur, eum, qui vult Principibus gratus esse, non Veronam, sed Placentiam proficisci oportet: hoc est, non vera, sed principi grata & placentia dicat. *Aphorismi Politici per Lambertum Danæum Collecti*, pag. 580.

" How many in former Ages have not only amaſſed to-
" gether all ſublunary Excellencies, that have ranſacked
" Heaven to ſupply their Flattery, deified their Princes,
" and perſuaded them they were Gods, who at laſt found
" they were to die like Men?

" As to the ſecond, Servility and Abjectneſs of Humour,
" there needs no other Proof than what already has been
" given, this Charge being implicitely involved in the
" former, of Lying, the condeſcending to that being the
" Mark of a diſingenuous Spirit.

" And accordingly the nobler Heathens looked on it
" as the Vice of Slaves and Vaſſals, below the Liberty of
" a Freeman, as well as of an honeſt Man.

" And to compleat this famous Compoſition, in the
" third Place, Treachery comes in, a Crime of ſo odious
" a Kind,

" That to name it, is to implead it. Yet how intrin-
" ſick a Part this of Flattery is, will need no Skill to
" evidence."

And what can be a greater Piece of Treachery, than for any to inveigle a Prince (under the Notion of a ſovereign Prerogative, and imperial Power) to violate his Coronation Oath, which he ſo publickly and ſolemnly had taken, for the obſerving and keeping of the Laws and Cuſtoms of the Realm; and to make him break in upon thoſe ancient and undoubted Laws of his Country, which fixed the Crown on his Head, and put a Bar to the Pretenſions of all others.

And therefore our wiſe Anceſtors, whenever they come to impeach ſuch as Criminals, deſervedly branded them with the juſt notorious Mark of being falſe, and Traitors to both King and Kingdom.

But to proceed;

" It is a common Obſervation of Flatterers, that they
" are all like the Heliotrope, open only towards the Sun,
" but ſhut and contract themſelves towards Night, and in
" cloudy

"cloudy Weather; let the Object of their Adoration be "but eclipſed, they can ſee none of thoſe Excellencies "which before dazled their Eyes.

"And however inconſtant they may ſeem to others, "they are indeed always true and conſtant to them-"ſelves,

"True to their fixed Principles of courting the Great-"neſs, not the Man.

"What they expect from thoſe ſycophanting Arts is "commonly

"1. Either Honour,

"2. Or Wealth."

Hitherto out of the religious Author of the *Whole Duty of Man.*

Of all theſe there are ſuch Crowds of Examples in Hiſtory, that it would be very impertinent here to mention any of former Ages; eſpecially conſidering our own, which is much more apt to furniſh Precedents for the future, they being ſuch abſolute Originals as the ſkillfulleſt Maſters of the paſt Times in the Art of Flattery come far ſhort of; they ſeeming not to have had Chymiſtry enough to ſublimate Royal Power to ſo high a Degree of Perfection in this Part of the World, as to aſſert an *Imperium planè Deſpoticum*, and that too *Jure Divino*, eſpecially if it be conſidered what *Bodin* hath obſerved; namely,

That *Terræ Populi omnes ad aquilonem poſiti, libertatem quandam ſpirant.* Bodin de Reip. lib. 1. cap. 8. pag. 117. impreſſ. Anno 1591.

This alone may ſuffice to overthrow all Pretence of the Antiquity of Deſpotical Power in theſe *Northern* Nations.

Yet to clear the Matter ſomewhat further:

I will give an illuſtrious Example, (though hundreds more might eaſily be added) of the Truth of *Bodin*'s Obſervations, as to *England.*

The

The Lord Chancellor *Bacon* tells us, that the People of *England* love the Laws thereof, and nothing will oblige them more than a Confidence of a free enjoying of them.

Raſt. Stat. *The Statute of* Merton, 20 Hen. III. cap. 9. fol. 6. Coke's 2d Inſt. fol. 96.

What the Nobles of *England* upon a particular Occaſion once ſaid, with one Voice in Parliament; *Tempore Hen.* III. *Nolumus Leges Angliæ mutari*, we will not have the Laws of *England* altered, is imprinted upon the Hearts of all *Engliſhmen*, who take themſelves to have as good a Title to their Laws, as to the common Air they breath in.

But this was in my Lord *Bacon*'s Time.

Now what Reward thoſe Sycophants deſerve, who following the Current of the Times, allured by private Hopes, and the Arguments of Vain-glory and Self-intereſt;

And with whom

Cœlum eſt venale, Deuſque.

Let us hear the profound Judgment of *Plutarch* *, grounded upon great Experience, and balanced by deep Obſervation.

Bene autèm multis faciant, ſaith he, *qui eos bonos reddunt quorum opera multi indigent; ſicut contrà, qui principes Reges Tyrannoſque ſolent corrumpere, Sycophantæ, Calumpniatores, atque Adulatores, ab omnibus profligantur, atque puniuntur, ut qui lethale venenum non in unum aliquem injecerunt calicem, ſed in fontem publicum & quo univerſos uti norint.*

"But they are profitable to many that make them "good, who are uſeful to many; as on the other Hand "Sycophants, Detractors, and Flatterers, who uſe to cor- "rupt Kings and Princes are run down and puniſhed by "all Men, as People that caſt deadly Poiſon, not into

* Plutarch. lib. *Maxime cum Principibus viris Philoſopho eſſe diſputandam*, 2 Moral. p. 383. Quemadmodum non uno ſupplicio dignus eſt qui fontem publicum, unde bibant omnes, veneno inficit, ita nocentiſſimus eſt qui Principis animum pravis infecerit opinionibus, quæ mox in tot hominum perniciem redundent. Nam ſi capite plectitur, qui Principis monetam vitiaverit, dignior eſt eo ſupplicio, qui Principis ingenium corruperit?

"ſome

" ſome one Cup, but into a Fountain that is publick,
" which they know all Men make uſe of."

And therefore it is no Miſrepreſentation which the Lord *Bacon* makes of thoſe pernicious Inſtruments ſo deſtructive of the Affection of Allegiance of Subjects, in the Counſel he gave to the Duke of *Buckingham*. " In reſpect of the " King your Maſter, *ſaith he*, you muſt be wary that you " give him true Information; and if the Matter concern " his Government, that you do not flatter him;

" If you do, you are as great a Traitor to him in the " Court of Heaven, as he that draws his Sword againſt " him.

" For the Law is the Hedge and Fence about the Li- " berty of the Subjects, and whilſt the Prerogative runs " within its ancient and proper Banks,

" The main Chanel thereof is ſo much ſtronger; for " Overflows, *as he adds*, evermore hurt the Chanel."

Lord Bacon's Reſuſcitation, part 1. fol. 53. *His Speech whilſt Attorney General.*

And though it muſt be confeſs'd this is true, that Princes are eaſily inclined to embrace ſuch Opinions which their Judges deliver for Law, and their Divines for Goſpel, for the Advancement of their Prerogatives,

Yet from the Chronicles of all Times it is evident, that paraſitical Minions, prompted by the Motives of their own Preferments, naturally become factious and ſeditious againſt all Governments whatſoever, that are eſtabliſhed by Laws; looking upon Law as their common Enemy: And for that Reaſon have been generally obſerved, either to deprave or corrupt it by their odious Opinions, or elſe to ſupplant and deſtroy it by their wicked Practices.

To whom it may well be ſaid, in the Words of the Poet,

Diſcite Juſtitiam moniti, & non temnere Divos;
Vendidit hic Auro Patriam, dominumque potentem,
Impoſuit: Fixit Leges pretio, atque refixit.

Virgil. Æn. cap. 6.

But whenever the long Hands of the Law took hold of them, they never wanted Confidence to ſay, that all their Deſigns and Actions were purely out of Loyalty and Zeal to the Service and Honour of their Princes.

When as, upon due Reflection made, it was too viſible that by all thoſe their Deſigns and Actions they were worſhipping their great Idol, *Intereſt*; from whence it hath ſo often happened in the World, that they have made the Reigns of Kings ſo very unfortunate, and calamitous both to themſelves, and their Subjects.

Now to purſue ſuch Men with deſerved Infamy and Reproach, and to make out the Force and Evidence of this Truth.

I ſay, that

King James *the Sixth's Speech to his firſt Parliament held in* England. Pulton's Stat. 1 Jac. cap. 2. fol. 1157, *or* 1151.

1. King *James* VI. of *Scotland*, in his Speech to his * Parliament in *England*, told them, "That not only the "Royal Prerogative, but the Peoples Security of Lands, "Livings, and Privileges, are preſerved and maintained "by the ancient fundamental Laws, Privileges, and Cu-"ſtoms of this Realm.

"And that by the aboliſhing and Alteration of them, "nothing but preſent Confuſion muſt fall upon the whole "State and Frame of the Kingdom."

King Charles *the Firſt's Declaration to all his loving Subjects, publiſhed with the Advice of his Privy Council.* Exact Collection of Declarations, pag. 28, 29.

2. And his Son King *Charles* I. was of the ſame Judgment, when he publiſhed to all Poſterity, "That the Law "was the Inheritance of every Subject, and the only Se-"curity he could have for his Life or Eſtate, and the which "being neglected or diſeſteemed, under what ſpecious "Shew ſoever, a great Meaſure of Infelicity, if not ir-"reparable Confuſion, muſt, without Doubt, fall upon "them."

3. Then, in a Word, it is God alone who ſubſiſts by himſelf.

* Parliamentum Angliæ eſt Curia, quæ, ſi vetuſtatem ſpectes, eſt antiquiſſima; ſi dignitatem, eſt honoratiſſima; ſi Juriſdictionem, eſt Capaciſſima.

Hinc ego nec metas rerum, nec tempora pono. Coke's 4th Inſtitute, p. 36.

The

The Right of Crowns and Kingdoms exiſt in mutual Dependance and Relation.

4. The Sovereignty, Lives, Honours, Liberties and Eſtates are all under the Guard of the Law, which when invaded by Fraud, or deſtroyed by Force, farewel all Peace and Happineſs either to Prince or People.

Sir *Edward Coke* hath truly obſerved, that the Nobility of *England* have ever had the Laws of *England* in great Eſtimation and Reverence, as their beſt Right. Coke's 2d Inſt. fol. 97.

And ſo have the Kings of *England* as their principal Royalty and Right, belonging to their Crown and Dignity.

This made *Henry* I, that noble King, ſirnamed *Beauclerk*, to write to Pope *Paſchall*.

Notum habeat Sanctitas veſtra, quod me vivente, (auxiliante Deo,) dignitas & uſus Regni noſtri Angliæ non minuentur, & ſi ego, quod abſit, in tantâ me dejectione ponerem,

1. *Optimates mei,*
2. *Inimo totius Angliæ populus,*

id nullo modo paterentur.

Literæ Hen. I. patri venerabili Paſchali ſummo Pontifici. *Cronicon Joannis Brompton, Anno Dom.* m. cap. 3. col. 999. lin. 36.

For a King of *England* therefore to deſpiſe the Law of *England*, it is, ſaith King *James* I, to neglect his own Crown. *King* James *the Firſt's Speech to the Lords and Commons attending him at* Whitehall, *the* 20th *of* March, 1609, *in the Collection of his Works*, fol. 532.

It being certain that he cannot change the Laws of his Kingdom *ad Libitum ſuum*, becauſe he governs his People *Principatu nedum Regali ſed & Politico*, not ſo much by a Regal as a Political Power. Forteſcue de laudibus Legum Angliæ, cap. 9. pag. 25.

If his Authority were merely Regal he might change the Laws of the Kingdom, and might lay Taxes and other Impoſitions upon them, without their Conſent, which is ſuch a Power as the Civil Law expreſſeth when it ſaith, *quod Principi placuit Legis habet Vigorem*, what the Prince pleaſeth to appoint, obtains the Force of a Law.

But the Power of a King who governs his People politically, is quite different, foraſmuch as he can neither change

change the Laws without the Conſent of his Subjects, nor burden his People againſt their Wills with new Impoſitions, becauſe his People enjoy their Eſtates freely, being governed by Laws of their own making, and are not liable to be polled by their King, nor any other;

And in like manner a People is happy under a King that governs with an Authority that is purely regal, provided he do not abuſe it to Tyranny.

Of ſuch a King it is that *Ariſtotle* ſpeaks in his third Book of *Politicks*, ſaying that *it is better for a People to be governed by an excellent Perſon, than by an excellent Law.* But becauſe it does not always happen that the Prince is ſuch a Perſon, St. *Thomas* in the Book that he wrote to the King of *Cyprus* concerning the Government of Princes, wiſheth that *Kingdoms were ſo conſtituted, as the King might not have Power to govern Tyrannically, if he would, which only can be, where the Regal Power is reſtrained by a Political Law.*

"Rejoice therefore, moſt excellent Prince, *ſaith the* "*Chancellor* Forteſcue, that the Law of the Kingdom, in "which you are to ſucceed is ſuch, for it will yield great "Security and Comfort both to yourſelf and your Peo-"ple."

The Earl of Clarendon's Survey of Mr. Hobbes's Leviathan, p. 107.

And another Lord Chancellor, the late Earl of *Clarendon*, told us, he muſt ſay again upon Mr. *Hobbes*'s Chapter of the *Nutrition and Procreation of a Common-wealth*,

"That he hath propoſed a very ungracious Method to him-"ſelf in forming his Government, by aſſigning a greater "Power and Authority to his Soveraign, than any honeſt "Magiſtrate deſires, or will ever exerciſe, or can think "himſelf ſecure in; and ſuch a Liberty and Property to "the Subject, as they can take no Delight in, and con-"ſequently can never wiſh well to that Government un-"der which they ſhall enjoy no more.

"Nor will they ever believe themſelves to be in Poſ-"ſeſſion of Liberty or Plenty, when it is in the Power

of

" of any one Man to diſpoſſeſs them of both or either, at " his Good Will and Pleaſure, without any Violation of " any Juſtice they can reſort to, or complain of.

" It is a very uncomfortable Propriety, proceeds that " learned Chancellor, that any Man can have in his Lands " and Goods, becauſe his Neighbour cannot take them " from him, if his Prince can juſtly take them from them " and give them to his Neighbour.

" Princes have their particular Affections and Inclina- " tions which ſway them as much as other Men, and are " prevailed upon by the ſame ſtrong Motives and Impul- " ſions; and if they may take away all from thoſe they " do not like, and as much as they think fit from thoſe " they like leſs, to give to thoſe they love, and to ſuch as " they like better, there can be no valuable Propriety in " any body but the Sovereign alone; and when it is once " found to be in him alone, he will not be long able to " defend his own Propriety, or his own Sovereignty."

It is *Machiavel*'s Exception againſt the entertaining of Foreign Forces, " That they are only mercenary, and " therefore indifferent in their Affections which Party wins " or loſes; and no doubt thoſe Soldiers fight moſt reſo- " lutely who fight to defend their own.

" And ſurely they who have nothing of their own to " loſe but their Lives, are as apt to throw thoſe away " where they ſhould not, as where they ſhould be ex- " poſed; and it is the uſual Artifice in all Seditions, for " the Leaders and Promoters of them, to perſuade the " People, that the Tendency and Conſequence of ſuch " and ſuch Actions done by the Magiſtrate, extends to the " depriving them of all their Propriety, the Jealouſy of " which hurries them into all thoſe Acts of Rage and De- " ſpair which proves ſo fatal to Kingdoms; and there was " never yet a wiſe and fortunate Prince, who hath not " enervated thoſe Machinations, by all the Profeſſions, and " all the Vindications of that Propriety, which they are ſo

" vigilant to preſerve and defend: And therefore it is a " wonderful prepoſterous Foundation to ſupport a Govern- " ment, to declare that the Subject has no Propriety in " any thing that excludes the Sovereign from a Right of " diſpoſing it; and it may be eaſily believed, that there " is not a Prince in *Europe*, that is civilized, would be " able to retain his Sovereignty one whole Year, after he " ſhould declare, as Mr. *Hobbes* doth, That his Subjects " have no Right in any thing they poſſeſs; but that he " may diſpoſe of all they have.

" For though they do too often invade that Propriety, " and take ſomewhat from them that is not their own, " they bear it better under the Notion of Oppreſſion and " Rapine, and as they look upon it as the Effect of ſome " powerful Subject's evil Advice (which will in time be " diſcovered, and reformed by the Juſtice of the Prince, " as hath often fallen out) than they would ever do under " a Claim of Right, that could juſtly take away all they " have, becauſe it is not the Subject's, but their own.

" And if Mr. *Hobbes* had taken the Pains, and known " where to have been informed of the Proceedings and " Tranſactions of *William the Conqueror*, he would have " found Cauſe to believe, That that great King did ever " dexterouſly endeavour, from the Time that he was aſ- " ſured that his Poſſeſſion would not be diſturbed, to di- " veſt himſelf of the Title of a *Conqueror*, and made his " legal Claim to what he had got by the Will of *Edward* " *the Confeſſor*, whoſe Name was precious to the Nation, " and who was known to have a great Friendſhip for " that Prince, who had now recovered what had been " his.

" And he knew ſo well the ill Conſequence muſt attend " the very Imagination that the Nation had loſt its Pro- " priety, that he made haſte to grant them an Aſſurance, " that they ſhould ſtill enjoy all the Benefits and Privi- " leges which were due to them by their own Laws and

" Cuſtoms,

" Cuſtoms, by which they ſhould be ſtill governed; as " they were during that whole King's Reign, who had " enough of the unqueſtionable Demeſne and Lands be- " longing to thoſe great Men who had periſhed with their " Poſterity in the Battle with *Harold*, to diſtribute to thoſe " who had born ſuch Shares and run ſuch Hazards in his " proſperous Adventure.

" And thoſe Laws and Cuſtoms which were BEFORE the " Conqueſt, are the ſame which the Nation and Kingdom " have been ſince governed by to this Day, with the Ad- " dition of thoſe Statutes and Acts of Parliament which " are the Laws of the ſucceſſive Kings, with which they " have gratified their Subjects, in providing ſuch new Se- " curity for them, and Advantages to the Publick, as upon " the Experience and Obſervation of the Ages and Times " when they were made, contributed to the Honour and " Glory of the King, as well as the Happineſs of the Peo- " ple; many of which are but the Copies and Tranſcripts " of ancient Land-marks, making the Characters more plain " and legible of what had been practiſed and underſtood " in the preceding Ages, and the Obſervation whereof are " of the ſame Profit and Convenience to King and " People.

" Such were the Laws in *Tully*'s Time, which Mr. " *Hobbes* wonderfully cites to prove that which *Tully* ne- " ver heard of, and which indeed is quite contrary to the " End of his Diſcourſe. Is it poſſible that *Tully* could " ever have ſaid, *Let the Civil Law be once abandoned, or* " *but negligently guarded,* (not to ſay oppreſſed) *and there* " *is nothing that any Man can be ſure to receive from his* " *Anceſtor, or to leave to his Children?* And again, *Take* " *away the Civil Law, and no Man knows what is his own* " *and what another Man's?* I ſay, (ſays the Chancellor) he " could never have mentioned and inſiſted upon this grand " Security of Mankind, if he had underſtood the Laws to " be nothing but the Breath of the Sovereign, who could " grant

" grant and diſſolve, or repeal this Law, with the ſpeak-
" ing a Word that his Will or Fancy dictates to him.

" How can any Man receive from his Anceſtor, or leave
" to his Children, if he be not ſure that his Anceſtors had,
" and that his Children ſhould have a Propriety? It was the
" Importance of, and the Delight in this Propriety, that
" produced that happy and beneficial Agreement between
" the Sovereign Power and the Naked Subject, which is
" mentioned before; that introduced the Beauty of Build-
" ing, and the cultivating the Earth by Art as well as In-
" duſtry, by ſecuring Men that they and their Children
" ſhould dwell in the Houſes they were at the Charge to
" build, and that they ſhould reap the Harveſt of thoſe
" Lands, which they had taken the Pains to ſow: What-
" ſoever is of Civility and Good Manners, all that is of Art
" and Beauty, or of real and ſolid Wealth in the World,
" is the Product of this Paction, and the Child of beloved
" Propriety: And they who would ſtrangle this Iſſue, de-
" ſire to demoliſh all Buildings, eradicate all Plantations,
" to make the Earth barren, and Mankind to live again
" in Tents, and nouriſh the Cattle by ſucceſſive Marches
" into thoſe Fields where the Graſs grows. Nothing but
" the Joy of Propriety reduced us from this Barbarity; and
" nothing but Security in the ſame, can preſerve us from
" returning into it again.

" Nor will any Man receive ſo great Prejudice and Da-
" mage by this Return, as the Kings and Princes themſelves,
" who had a very ample Recompenſe, which they ſtill en-
" joy, by dividing their unprofitable Propriety with their
" Subjects, having ever ſince received much more Profit
" from the Propriety in the Hands of the Subjects, than
" they did when it was in their own, or than they do from
" that which they reſerved to themſelves; and they con-
" tinue to have the more or leſs upon a true Account, as
" this Paction is the more or leſs exactly obſerved and com-
" plied with." — Thus far that Great Man.

But

But he that desires to find out the Original of the *English* Laws, let him consult *Bracton*, *ex illustri Stemmate ortum*, *qui claruit* (as *Balæus* notes) *anno post Messiam ex Virgine natum* MCCXL, *sub* 29 *Henrici* III; *cujus beneficio totos viginti annos Præsidis Justitiæ supremi munere fungebatur:* So that by a reasonable Computation of Time we may suppose him to have lived near the Days of *Richard* the First. This Judge of so profound Knowledge in the ancient Laws and Customs of the Nation, hath laid down and delivered for a Rule to all Posterity, and there ought to be little Difficulty to believe him, That ‡ *Legis Vigorem habet quicquid de Consilio & de Consensu*

Balæus Cent. III. cap. 98. fol. 282.

1. *Magnatum*,
2. *Reipublicæ communi sponsione*,
3. *Authoritate Regis sive Principis*,

Præcedente, *justè fuerit definitum & approbatum.* That is, "Whatsoever was regularly determined and approved of,

"1. By the Counsel and Consent of the Great Men,

"2. By the general Agreement of the Commonalty,

"3. With the Regal Authority first obtained,

"That had the Force of a Law."

There is yet behind another Branch of *Bracton*, which is also of great Import, and it is this: *Hujusmodi verò Leges Anglicanæ & Consuetudines, Regum Authoritate, jubent quandoque, quandoque vetant, & quandoque vindicant, & puniunt Transgressores; quæ quidem tum fuerint approbatæ Consensu utensium*, & Sacramento Regum confirmatæ, mutari non poterunt nec destrui sine Communi Consensu & Consilio eorum omnium, quorum Consilio & Consensu fuerunt promulgatæ†.*

Bracton lib. 1. cap. 2. fol. 1.

‡ Bracton's *Rule concerning the Authority by which General Laws were ordained in* England *in old Times.*

* *The ancient* English *Law and Customs were not to be changed or abrogated, but by the common Assent of all those by whom they were promulgated and made.*

† Nihil tam conveniens est naturali Æquitati, quam unumquodque dissolvi posse eo ligamine, quo ligatum est.

From whence it is too obvious to admit of a Denial; but that ſuch are the *Antiquæ Libertates Angliæ*, not only in *Bracton*'s Time, but in preceding Ages. And therefore,

1. *Non Obſtantes* could not then be brought into Faſhion, nor,

2. Was the Notion of declaring Acts of Parliament to be void, by virtue of the Judge's Expounding Power, then hatched.

Rot. Parliam. 15 Edw. III. N° 50. dor. And as for after Times, the Statute of the 15th of *Edward* the Third proves that *Le Grand Chartre, & le Chartre de la Foreſt, & les autres Statutes*, were made,

1. *Per le Roy & ſes Progenitors*,
2. *Piers*,
3. *Et la Commune de la Terre.*

Raſtall's Stat. 15 Edw. III. cap. 1. 1. From whence it muſt be granted me, That not only *Magna Charta*, and *Charta de Foreſta*, but all other following Statutes 'till the 15th of *Edward* the Third, were made,

By the King, Peers, and Commons of the Land.

2. It muſt likewiſe be granted me, from the Words of *Bracton*, that ſuch Laws could not be changed, nor repealed, but by common Conſent of the Promulgators thereof. In a word, theſe Authorities run apparently counter to the Rhapſodies of the haſty and huddled Thoughts of moſt, if not of all our Hiſtorians who have writ ſince the *Reformation*. Nay indeed many of the Notions and Principles they have publiſhed to the World, touching the Abſoluteneſs of our old *Engliſh* Monarchy, are ſo palpably inconſiſtent with theſe Authorities, that they may very well be taken for downright audacious Affronts to the Truth of all Antiquity.

Utopia, *p.* 47, 48. *printed* Anno 1685. "But Judges (ſaith Sir *Thomas More*, who was Lord "Chancellor of *England*) muſt be made ſure that they "may declare always in favour of the Prerogative: They "muſt be often ſent for to Court, that the King may hear

"them

" them argue thoſe Points in which he is concerned; ſince " that, how unjuſt ſoever any of his Pretenſions may be, yet " ſtill ſome one or other of them, either out of Contra- " diction to others, or the Pride of Singularity, or that they " may make their Court, would find out ſome Pretence " or other, to give the King a fair Colour to carry the " Point. For if the Judges do but differ in Opinions, " the cleareſt Thing in the World is made by that means " diſputable; and Truth being once brought in queſtion, " the King upon that may take Advantage to expound the " Law for his own Profit: The Judges that ſtand out will " be brought over, either out of Fear or Modeſty: And " they being thus gained, all of them may be ſent to the " Bench to give Sentence boldly, as the King would " have it.

" For fair Pretences will never be wanting, when Sen- " tence is to be given in the Prince's Favour.

" It will either be ſaid, that Equity lyes of his Side; " or ſome Words in the Law will be found founding that " Way, or ſome forced Senſe will be put on them: And " when all other Things fail, the King's undoubted Pre- " rogative will be pretended, as that which is above all " Law, and to which a religious Judge had need to have " a ſpecial Regard.

Sir *Edward Hide*, after Earl of *Clarendon* and Lord Chancellor of *England*, in an eloquent and learned Speech which he made againſt the Ship-money Judges, before the Lords in Parliament, ſpeaks as follows:

Ruſhworth's *Hiſtorical Collections, Part 2. fol.* 1360.

" My Lords,

" There cannot be a greater Inſtance of a ſick and " languiſhing Common-wealth, than the Buſineſs of that " Day. Good God! how have the Guilty theſe late " Years been puniſhed, when the Judges themſelves have " been ſuch Delinquents. 'Tis no marvel, that an irre- " gular, extravagant, arbitrary Power, like a Torrent,

" hath

" hath broken in upon us, when our Banks and our Bul-
" warks, the Laws, were in cuſtody of ſuch Perſons.
" Men who had loſt their Innocence, could not preſerve
" their Courage; nor could we look that they who had
" ſo viſibly undone us themſelves, ſhould have the Virtue
" or Credit to reſcue us from the Oppreſſion of other
" Men."

It was once ſaid by one who always ſpoke excellently,
" That the Twelve Judges were, like the Twelve Lions
" under the Throne of *Solomon*, under the Throne in Obe-
" dience, but yet Lions. Your Lordſhips ſhall this Day
" hear of Six, who (be they what they will be elſe) were
" no Lions, who upon vulgar Fears delivered up the pre-
" cious Forts they were truſted with, almoſt without Aſ-
" ſault; and in a tame and eaſy Trance of Flattery and
" Servitude loſt and forfeited (ſhamefully forfeited!) that
" Reputation, Awe and Reverence, which the Wiſdom,
" Courage and Gravity of their venerable Predeceſſors had
" contracted and faſtened to the Places they now hold;
" and even rendered that Study and Profeſſion, which in
" all Ages hath been, and I hope now ſhall be of an ho-
" nourable Eſtimation, ſo contemptible and vile, that, had
" not this bleſſed Day come, all Men would have had
" that Quarrel to the Law itſelf, which *Marius* had to the
" *Greek* Tongue, who thought it a Mockery to learn that
" Language, the Maſters whereof lived in Bondage under
" others.

" And I appeal to theſe unhappy Gentlemen themſelves,
" with what a ſtrange Negligence, Scorn and Indignation,
" the Faces of all Men, even of the meaneſt, have been
" directed towards them; ſince, to call it no worſe, that
" fatal Declenſion of their Underſtandings in thoſe Judg-
" ments, of which they ſtand here charged before your
" Lordſhips.

" But, my Lords, the Work of this Day is the greateſt
" Inſtance of a growing and thriving Common-wealth too,

" and

" and is as the Dawning of a fair and laſting Day of Hap-
" pineſs to this Kingdom.

" It is in your Lordſhips Power (and I am ſure it is in
" your Lordſhips Will) to reſtore the dejected broken Peo-
" ple of this Iſland to their former Joy and Security, the
" Succeſſors of theſe Men to their old Privileges and Ve-
" neration, *& ſepultas propè Leges revocare.*

But had that Noble Lord lived 'till this Day, and ſeen the fatal Alterations and Revolutions that have ſince his Time happened to theſe three Kingdoms, by that Expounding Power to which the Judges have in *Weſtminſter Hall* ſo confidently pretended, which gave the Riſe and Growth to all our late Miſeries and Calamities; What wonderful Coincidents both in Cauſes and Conſequences would he have obſerved! How then would he have burſt forth into bitter Exclamation, *Hinc illæ Lachrymæ!* And above all, could not fail to have been ſtruck dumb upon the reading of his Highneſs the Prince of *Orange*'s Declaration, out of which I humbly beg leave to give this that follows:

" It is both certain and evident to all Men, that the
" publick Peace and Happineſs of any State or Kingdom
" cannot be preſerved, where the Laws, Liberties and Cu-
" ſtoms eſtabliſhed by the lawful Authority in it, are openly
" tranſgreſſed and annulled; more eſpecially where the
" Alteration of Religion is endeavoured; and that a Reli-
" gion, which is contrary to Law, is endeavoured to be
" introduced: Upon which, thoſe who are immediately
" concerned in it, are indiſpenſably bound to endeavour
" to preſerve and maintain the eſtabliſhed Laws, Liberties
" and Cuſtoms, and above all the Religion and Worſhip
" of God, that is eſtabliſhed among them; and to take
" ſuch a Care, that the Inhabitants of the ſaid State or
" Kingdom may never be deprived of their Religion, nor

" of their Civil Rights; which is ſo much the more ne-
" ceſſary, becauſe the Greatneſs and Security both of
" Kings, Royal Families, and of all ſuch as are in Au-
" thority, as well as the Happineſs of their Subjects and
" People, depend in a moſt ſpecial manner upon the
" exact Obſervation and Maintenance of theſe their Laws,
" Liberties and Cuſtoms."

Upon theſe Grounds it was, that his Highneſs ſaith,
" He could not any longer forbear to declare, That to his
" great Regret he ſaw, that thoſe Counſellors, who lately
" had the chief Credit with the King, had overturned the
" Religion, Laws and Liberties of theſe Realms, and ſub-
" jected them in all things that related to their Conſci-
" ences, Liberties and Properties to arbitrary Government;
" and that not only by ſecret and indirect Ways, but in
" an open and undiſguiſed Manner.

" Thoſe evil Counſellors, for the advancing and co-
" louring this with ſome plauſible Pretext, did invent
" and ſet on foot the King's diſpenſing Power; by virtue
" of which, they pretended, that according to Law, he
" could ſuſpend or diſpenſe with the Execution of the
" Laws that had been enacted by Authority of King and
" Parliament, for the Security and Happineſs of the Sub-
" ject; and ſo had rendered thoſe Laws of no effect:
" Though there is nothing more certain, than that as no
" Law can be made but by the joint Concurrence of King
" and Parliament, ſo likewiſe Laws ſo enacted, which ſe-
" cure the publick Peace and Safety of a Nation, and the
" Lives and Liberties of every Subject in it, cannot be re-
" pealed or ſuſpended, but by the ſame Authority.

" For (as he goes on) though the King may pardon the
" Puniſhment that a Tranſgreſſor hath incurred, and to
" which he is condemned, as in the Caſes of Treaſon or
" Felony; yet it cannot be with any Colour of Reaſon in-
" ferred from thence, that the King can entirely ſuſpend
" the Execution of thoſe Laws relating to Treaſon or Fe-
" lony;

" lony; unleſs it is pretended, that he is cloathed with a " deſpotick and arbitrary Power, and that the Lives, Li- " berties, Honours and Eſtates of the Subjects depend " wholly on his good Will and Pleaſure, and are entirely " ſubject to him; which muſt infallibly follow, on the " King's having a Power to ſuſpend the Execution of Laws, " and to diſpenſe with them.

" And (as he proceeds) thoſe evil Counſellors, in order to " the giving ſome Credit to this ſtrange and execrable " Maxim, had ſo conducted the Matter, that they had " obtained a Sentence from the Judges, declaring that his " Diſpenſing Power was a Right belonging to the Crown: " As if it were in the Power of the Twelve Judges, to " offer up the Laws, Rights and Liberties of the whole " Nation to the King, to be diſpoſed of by him arbitrarily " and at his Pleaſure, and expreſsly contrary to Laws " enacted for the Security of the Subjects. And in order " to the obtaining that Judgment, thoſe evil Counſellors " had before-hand examined ſecretly the Opinion of the " Judges, and procured ſuch of them as could not in Con- " ſcience concur in ſo pernicious a Sentence, to be turned " out, and others to be ſubſtituted in their Rooms; 'till " by the Changes which were made in the Courts of Ju- " dicature, they at laſt obtained that Judgment. And " they had raiſed ſome to thoſe Truſts who made open " Profeſſion of the Popiſh Religion, though thoſe were by " Law rendered uncapable of all ſuch Employments."

Thus much out of his Highneſs's Declaration.

But to ſpare nothing for Truth's ſake, to oblige thoſe who maintain Abſolute Monarchy, we will to this ſubjoin Dr. *Heylin*'s Survey of the State of *France*, taken by himſelf when he was there, which he ſaith was deſcribed more punctually than ever theretofore in the *Engliſh* Tongue.

Dr. Heylin's *Epiſtle Dedicatory to the Marquis of* Dorcheſter, *of his* Survey of the State of *France*.

In

Dr. Heylin's Survey, &c. cap. 4. p. 247.

In his *Fourth* Chapter of his *Survey*, he informs us, "That the Government of the King of *France* is merely "indeed Regal, or, to give it the true Name, Deſpotical: "Though the Country be his Wife, and all the People his "Children, yet doth he *never* govern as an Huſband or a "Father: He accounteth of them all as of his Servants, "and therefore commandeth them as a Maſter.

"In his Edicts, which he over frequently ſendeth about, "he never mentioneth the Good-Will of his Subjects, nor "the Approbation of his Council; but concludeth all of "them in this Form: *Car tiel eſt noſtre Plaiſir*; *Sic volo*, "*Sic jubeo.*"

And a little after,

Pag. 247. "They therefore which have writ of Republicks, do "moſt applaud and commend this mixed Manner of Rule, "which is equally compounded of the Kingdom and the "*Politeia*, becauſe in thoſe the Kings have all the Power "belonging to their Title, without Prejudice to the Po-"pulacy.

"In thoſe there is referred,

"1. To the King, Abſolute Majeſty;

"2. To the Nobles, convenient Authority;

"3. To the People, an incorrupted Liberty;

"All in a juſt and equal Proportion. Every one of thoſe "is like the Empire of *Rome*, as it was moderated by "*Nerva*, *Qui res olim diſſociabiles miſcuerat*, *Principatum* "*& Libertatem*; wherein the Sovereignty of one enda-"maged not the Freedom of all.

"A rare Mixture of Government (proceeds the Doctor) "and ſuch at this Time is the Kingdom of *England*; a "Kingdom of a perfect and happy Compoſition; where-"in,

"1. The King hath his full Prerogative,

"2. The Nobles all due Reſpect,

"3. And the People, amongſt other Bleſſings, perfect "in this, that they are Maſters of their own Purſes, and

"have

" have a ſtrong Hand in the making of their own " Laws.

" On the other Side, in the Regal Government of " *France*, the Subject frameth his Life merely as the " King's variable Edicts ſhall pleaſe to enjoin him; is ra- " viſhed of his Money as the King's Taſk-maſters think fit, " and ſuffereth many other Oppreſſions.

" In *France*, it is the only Study of ſome Men to find " out Devices of enriching themſelves, and undoing the " People. *Dr.* Heylin's Survey, *&c.* pag. 249.

" As for Monopolies, they are there ſo common, that " the Subject taketh no notice of them."

From the King, the Doctor deſcends to the Subjects; Pag. 251. " *Ab Equis, quod aiunt, ad Aſinos*:" And the Phraſe, he ſays, is not much improper, the *French* Commonalty being called the King's *Aſſes*.

" Theſe are divided in Three Ranks or Claſſes:

" 1. The Clergy,

" 2. The Nobles,

" 3. The Peaſants.

" Out of which certain Delegates or Committees choſen " upon Occaſion, and ſent to the King, did anciently con- " cur to the making of the Supreme Court for Juſtice in " *France*. It was called,

" 1. The Aſſembly of the Three Eſtates, or,

" 2. The *Conventus Ordinum*;

" and was juſt like the Parliament of *England*: But thoſe " Meetings are now forgotten, or out of Uſe; neither in- " deed, as this Time goeth, can they (as the Doctor con- " ceives) any way advantage the State.

" For whereas (ſaith he) there are Three principal, if not " ſole Cauſes of thoſe Conventions, which are,

" 1. The diſpoſing of the Regency during the Non-age " or Sickneſs of a King;

* Goldastus *ſaith*, Franci Comitia celebrabant omnium ordinum Conventus in quibus de Cauſis ſacris, profanis, publicis, privatiſque decernebatur. *Goldaſt. Rerum Almanicarum*, tom. 3. fol. 8.

" 2. The granting Aids and Subſidies;
" 3. And the redreſſing of Grievances;
" There is now another Courſe taken in them: The Par-
" liament of *Paris*, which ſpeaketh as it is prompted by
" Power and Greatneſs, appointeth the Regent; the Kings
" themſelves with their Officers determine of the Taxes;
" and as concerning their Grievances, the King's Ear is
" open to private Petitions."

Upon which the Doctor makes the following Obſervation:

" This is that little of a Common-wealth which went to
" the making up this Monarchy, eſcheated or rather de-
" voured by the KING; that Name alone containing in
" it both Clergy, Princes and People. So that ſome of
" the *French* Counſellors may ſay with *Tully* in his Oration
" for *Marcellus* unto *Cæſar*, *Doleoque cum Reſpublica im-*
" *mortalis eſſe debeat, eam unius mortalis Anima conſiſtere.*"

Dr. Heylin's Survey, *&c.* pag. 258.

Laſtly, In his *Fifth* Chapter, wherein he gives an Account of the baſe and low Eſtate of the *French* Peaſants, he tells us,

Pag. 260.

" That they are People of any the moſt unfortunate,
" not permitted to enjoy the Fruit of their Labours, and
" ſuch as above all others are ſubject to that Sarcaſm in
" the Goſpel, *This Man planted a Vineyard, and doth not*
" *drink of the Fruit thereof:*

" *Nec proſunt domino, quæ proſunt omnibus, Artes.*

" Yet were their Caſe not altogether ſo deplorable, if
" there were but Hopes left them of a better, if they could
" but compaſs Certainty, that a painful Drudging, and a
" thrifty Saving would one Day bring them out of that
" Hell of Bondage.

" In this, queſtionleſs, they are entirely miſerable, in
" that they are ſenſible of the Wretchedneſs of their pre-
" ſent Fortunes, and dare not labour nor expect an Al-
" teration."

Hitherto Dr. *Heylin* in his Survey of *France*.

But

But, What is the Reaſon why thoſe miſerable and wretched People expect no Alteration of their Condition? Why, the Reaſon muſt be evident to all Mankind; The *French* have loſt their *Auguſtiſſimus Francicarum Libertatum Conventus*, & *Sacrâ Anchora*; *i. e.* The Aſſembly of their Three Eſtates, whereby their Government is now become Deſpotical.

Now for the Illuſtration of what hath been ſaid in this *Introduction*; and that not only the preſent, but future Ages may be better enabled to underſtand and have a right Notion of ſeveral weighty Points relating to the ancient Government of this famous Kingdom; I have, after great Pains and Charges, at laſt adventured to publiſh the following Treatiſe to the World: And I cannot perſuade myſelf that the ingenuous and judicious Reader will think his Time ill ſpent in peruſing that which I have here given him with all the Truth and Sincerity of an impartial and unbiaſſed Mind: And that himſelf will find that the main End and Scope of the whole hath been only levelled at the publick Good and Happineſs both of King and People.

For whatever I have, or ſhall ſay in this Collection, I would not be ſo underſtood as if I denied to the King his juſt Prerogatives. No; I never did, nor I hope never ſhall. For I hold this Golden Royal Maxim:

"That the King's Prerogative is to defend the People's "Liberties; and that the People's Liberties ſtrengthen the "King's Prerogative."

King Charles *the Firſt's Speech in Parliament, upon ſigning the Petition of* Right *See* Pulton's Stat. An. 3 Car. I.

Fallitur egregie quiſquis ſub Principe credit
Servitium; nunquàm Libertas gratior extat,
Quàm ſub Rege pio. Quos præficit ipſe regendis
Rebus, ad Arbitrium Plebis Patrumque reducit,
Conceditque libens, Meritis ſeu Præmia poſcant,
Seu punire velint. ——

Claudian de Laudibus Stiliconis, lib. 3. pa. 183. *impr. Amſtel.* 1628.

Which, although it was ſpoke of the *Roman* Government, yet it is a moſt excellent and lively Deſcription of

of the conſtituent Parts of this Political Government of *England.*

And therefore every Good Man, even from the Nature and Rule of Government in general, ought to honour the Conſtitution, and reverence the Laws of this our Country, according to that of the Poet,

Vir Bonus eſt Quis?
Qui Conſulta Patrum, qui Leges Juraque ſervat.

Hooker's Eccleſiaſtical Polity, *in his Life*, fol. 51. Anno 1607.

"For of Law (ſays the Learned and Reverend Mr. *Hooker*) "there can be no leſs acknowledged, than that

"1. Her Seat is the Boſom of God,

"2. Her Voice is the Harmony of the World;

"3. All Things in Heaven and Earth do her Homage, "the very leaſt as feeling her Care, and the greateſt as not "exempted from her Power.

"Both Angels, and Men, and Creatures of what Con-"dition ſoever, though each in different Sort and Manner, "yet all with uniform Conſent admiring her as the Mo-"ther of their Peace and Joy."

Jus

Jus Parliamentarium,

OR, THE

ANCIENT JURISDICTION

OF THE

Moſt High Court of Parliament

OVER THE

INFERIOR COURTS

IN

WESTMINSTER HALL, &c.

PART I.

CHAP. I.

Concerning annual Parliaments, called for the redreſſing of the State of the Realm in ſuch things as require Amendment, and in particular for the final determining of all ſuch Caſes, where the Law failed, and no Remedy had been ordained: Or where Points in former Statutes had need of Expoſition, and where the Judges of Weſtminſter Hall *differed in their Opinions concerning what the Law was in ſeveral Caſes.*

SIR *Henry Spelman* gives us an Account that the *Engliſh-Saxons* had their Folcmote, which was held *ſemel quotannis ſub initio calendarum Maii (tanquam in annuo Parliamento).* And that to ſuch Yearly Aſſemblies *convenere regni Principes, tam Epiſcopi, quam Magiſtratus, Liberique homines.* Wherein *conſulitur de communi ſalute,*

Spelm. Gloſſ. *fol.* 261. *col.* 1. de Gemotis Anglo-Saxonum.

1. *De Pace,*
2. *De Bello,*
3. *Et de Utilitate publica promovenda.*

This I underſtand from the Subject Matters whereof that Council did treat and debate, that it could be no other Aſſembly, than that which was called their *Witenagemote*, or what we now call Parliament.

Spelm. Concill. *Tom.* I. *fol.* 334. And Sir *Henry* farther obſerves, that under King *Beornulfe*, *Annis ſingulis, concilia ſingula, id eſt, concilia quatuor in quatuor annis celebrata.*

Camden, Brit. *fol.* 202. Mr. *Camden*, out of an old Book of the Abby of *Abbendon*, informs us, that *Abbendon* was in the *Saxon* Times called Sheouerham, *civitas famoſa*, and that *hic ſedes regia, huc, cum de regni præcipuis & arduis tractaretur negotiis, concurſus fiebat populi.* And Mr. *Somner* thus, — Lloɼerhoo, Lleoɼerho, *locus conciliorum Anglo-Saxonicorum frequentia celeberrimus — Hæc autem loco illi ad concilia annuatim celebranda ab Anglo-Saxonibus deſignato adeo conveniunt — ut mihi videatur veri non abſimile, loci nomen, ibi mendoſe ſcriptum* Sheoueſham *pro* Cleoveſham, and places it *in umbilico* or *medio regni*, which he takes *Abbindon* there to have been.

Somneri Dictionar. Saxonico-Latino-Anglicum in voce Lleoɼerho.

Idem in voce Abbandune, Abindonia.

But to deſcend to latter Ages.

Mr. Prynne's *3d Tome of* The Supreme Eccleſiaſtical Juriſdiction of our Engliſh Kings, *fol.* 157. I. Pope *Gregory* X, having in the third Year of *Edward* I, ſent *Reymundus de Negoriis*, his Chaplain, as his Nuncio into *England*, for certain Affairs of the Church, eſpecially to demand and receive of that King, *Annuum cenſum, in quo conſtat eidem teneri pro inſtanti, & ſeptem tranfactis annis, in quibus non fuit cenſus hujuſmodi perſolutus*, which I underſtand was King *John*'s annual Tribute of a thouſand Marcs.

Edward I, upon the Receipt of the Pope's Bull, ſent the following Anſwer to the Pope himſelf.

Rot. Clauſ. 3. Ed. I. m. 9. Cedula. *SAnctiſſimo in Chriſto patri & domino domino G. divina providentia ſacroſanctæ Romanæ & univerſalis eccleſiæ ſummo pontifici, Edwardus ejuſdem gratia rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ, cum reverentia & honore ſalutem & pedum oſcula beatorum.*

Mandavit nobis olim per literas Apoſtolicas, quas prona mentis devotione recepimus, veſtra ſanctitas reverenda, ut annuum cenſum, in quo, ſacroſanctæ Romanæ eccleſiæ ratione, regni Angliæ pro octo præteritis annis aſſeritis nos teneri, venerabili viro magiſtro R. de Negoriis capellano veſtro aſſignari liberaliter ac integre nomine prædictæ Romanæ eccleſiæ faceremus.

Nuper autem alias literas veſtras recepimus cum reverentia, continentes, quod cum nos reſponſionem petitionis ſolutionis cenſus annui memorati, quam nobis prædictus capellanus veſter expoſuit, veſtræ & eccleſiæ Romanæ nomine, diligenter deliberatione conſilii procerum regni noſtri in Parliamento, quod circa octabas Reſurrectionis Dominicæ celebrari in Anglia conſuevit, pro eo duxerimus reſervand. quod tempore

receptionis

receptionis prædictarum literarum veſtrarum noviter ejuſdem regni noſtri gubernacula ſumpſeramus: nunc de hujuſmodi cenſu ſine ulteriori procraſtinatione impendi faceremus eidem ſatisfactionem plenariam capellano.

Fatemur ſiquidem, ſanctiſſime pater & domine, [nos] *ad Parliamentum noſtrum in octabis Reſurrectionis Dominicæ proximo præteritis regni noſtri*

1. *Prælatos &*
2. *Proceres*

evocaſſe, ibique multa ſtatuiſſe, divina gratia favente, quæ

1. *Melioracionem ſtatus eccleſiæ Anglicanæ,*
2. *Reformationem regni ejuſdem reſpiciunt,*
3. *Et communis profectus populi ſapiant incrementa.*

Set antequam eidem Parliamento, propter negotiorum multitudinem quæ reformationis remedio indigebant, finem imponere valeremus, eodem capellano veſtro reſponſionem debitam ſibi fieri inſtanter poſtulante, quædam nos gravis invaſit, ſicut Domino placuit, infirmitas corporalis, quæ perfectionem multorum aliorum negotiorum & deliberationem petitionis cenſus annui ſupradicti, de quo dolemus non modicum, impedivit, ſicque cum occaſione infirmitatis hujuſmodi, (a qua per Dei gratiam, cujus eſt percutere & mederi, incepimus convalere) idem Parliamentum fuerit diſſolutum, & propter hoc nequiverimus ſuper petitione cenſus ejuſdem deliberationem habere, cum

1. *Prælatis &*
2. *Proceribus*

antedictis, ſine quorum communicato conſilio ſanctitati veſtræ ſuper prædictis non poſſumus reſpondere; ut jurejurando in coronatione noſtra præſtito ſumus aſtricti,

Quod jura regni noſtri ſervabimus illibata, nec aliquid, quod diadema tangat regni ejuſdem, abſque ipſorum requiſito conſilio faciemus.

Reverendæ benignitati veſtræ humiliter ſupplicamus, & pro dono petimus ſpeciali, quatenus moleſte non ferat ſanctitas veſtra, ſi ad præſens vobis ſuper prædictis, ſicut vellemus, non poſſumus reſpondere; immo patientia veſtra paterna, ſi placet, nos ſuper hoc habere dignetur de gratia excuſatos.

Pro firmo ſcituri, pie pater & domine, quod in alio Parliamento noſtro, quod ad feſtum Sancti Michaelis proximo futurum intendimus, dante Domino, celebrare, habito & communicato conſilio cum

1. *Prælatis &*
2. *Proceribus*

memoratis, vobis ſuper præmiſſis certam de ipſorum conſilio dabimus reſponſionem.

Conſervet vos Dominus eccleſiæ ſanctæ ſuæ per tempora longiora.

Teſte meipſo apud Weſtmin. xix. die Januarii, anno regni noſtri tertio.

Thus

Thus have I given the Reader this ſo remarkable an Anſwer, which *Edward* I. gave the Pope's Bull, and that at length, to prevent all Cavils.

And now I expect it will be asked how I can apply the Anſwer to my Purpoſe? To whom I ſay I will make uſe of it by way of

REFLECTIONS.

The firſt is, that before the third of *Edward* I, Son and next Succeſſor to *Henry* III, who reigned thirty ſix Years, *Parliamentum circa octabas Reſurrectionis Dominicæ celebrari in Anglia conſueverat:* That is, a Parliament had been accuſtomed to be held in *England* about *Eaſter*, and the Law ſays, that it is a thing incident and inſeparable to a Cuſtom to be Time out of Mind.

The Concluſion then of this Reflection muſt be, that there were annual Parliaments long before 49 *Hen.* III.

My ſecond Reflection is, that the King farther tells the Pope, that he had held *Parliamentum in octabis Reſurrectionis Dominicæ (tunc) proximo præteritis.*

Rot. Statut. n. Coke's 2 Inſt. *fol.* 156.

Now the Parliament which King *Edward* here means, was the Parliament of *Weſtminſter* the *firſt*, which was held *lendemain de la clauſe de Paſche, l'an de ſon raign* 3. *annoque Domini* MCCLXXV, and called out of the King's great Zeal and Deſire to redreſs the State of the Realm in ſuch things as required Amendment for the common Profit of the holy Church, and of the Realm.

The Concluſion of this Reflection muſt be, that at that Parliament the Statute of *Weſtminſter* the *firſt* was made.

My third is this; In the Anſwer it is ſaid, that the King to that Parliament, *regni Prælatos & Proceres evocavit.*

Objection. There is no Commons, ſay ſome, to be found in this Parliament, nor any thing that tends towards a Proof that the Commons had any Share in making any Laws therein; but the *Prælati & Proceres* were the only Members thereof.

For the Commons, as at this Day known, are not to be found amongſt the Community of *England* in old Hiſtorians; and the King and his Council were Judges whether, and when, Burgeſſes ought to come to Parliament.

Anſwer. There are ſome Degrees of Shame, over which when People are once paſt, all things become ſo familiar to them, that they can no more be put out of Countenance.

But now to refute the Objection; for who can expect ſuch groſs Errors ſhould be confuted before this Age, ſince in former Times they were not ſo much as dreamt of?

Rot. Statut. n. Coke's 2 Inſt. *fol.* 156.

The Statute-Roll of the Parliament of *Weſtminſter* the *firſt*, proves, beyond all Contradiction, that theſe Laws were made *per l'aſſentment*

1. *Des Archieveſques, Abbes, Priors,*
2. *Countes, Barones,*
3. *Et tout le Communalty de la Terre illonques ſummones.*

Or, as the Regiſter of Writs, a Book of great Authority in the Law, ſaith in a Writ framed upon the XXVth Chapter of this very Statute, that

Regiſtrum omnium Brevium tam Originalium quam Judicialium, *fol.* 189.

De Communi Concilio regni ſtatutum fuit.

What then muſt the Concluſion of this Reflection be? Why this, that under the general Phraſe of *regni Prælati & Proceres*, mentioned in *Edward* the Firſt's Anſwer, the Commons muſt of Neceſſity be comprehended, as well as the Archbiſhops, Biſhops, Abbots, Priors, Earls and Barons.

And, by like Concluſion, the Commons were not firſt introduced into Parliament, nor could firſt begin to be an eſſential Part of Parliament in the 49th of *Henry* III. by Rebellion, which was but eleven Years before 3 *Edw.* I, notwithſtanding ſo many mercenary Pens have in bulky Volumes confidently aſſerted they did.

And as for the Houſe of Lords, it hath been with equal Aſſurance publiſhed to the World; that about the ſame time that King called what Earls and Barons he thought fit to Parliament, and no others; and that what he began, that is, to call ſuch Earls and Barons *quos dignatus eſt*, ſuch as he pleaſed, *Edward* I, and his Succeſſors, conſtantly obſerved.

And then very complementally conclude, that as theſe new Conſtitutions of Parliaments had their Origin from the King's Authority, ſo from the ſame Authority and Time it was known, that this moſt excellent great Council received its Perfection, and became exactly fitted for the Government of theſe Nations. Fabulæ Fabuloſiſſimæ

But all this requires a more copious Diſcourſe, to detect and lay open the tranſparent Sophiſtry of ſuch pernicious Miſconceits and deſperate Poſitions, touching the original Conſtitution of our *Engliſh* Parliaments;

And therefore I paſs on,

II. In the Parliament Roll of the 5th of *Edward* II, among other Ordinances made at *London*, this was one:

De Parlement tenir de Ana en Ana.

PUR ceo que moultz gentz ſont delaies en la court de Roy de leur demaunde, partant que la partie alledg, que les demaundans ne devient eſtre reſponduz ſaunz le Roi; & auxint moultz de gentz greves par les miniſtres de Roi; encountre droiture des queles grevances home ne purra avoir recoverier ſaunz commune Parlement: Nous ordainoms, que le Roi teigne Parlement une foiz par ann, ou deux foiz, ſi meſtier ſoit, & ceo en lieu convenable. Rot. Parl. 5 Ed. II. Ordinationis apud London, N°. 29.

Et que en meiſmes les Parlements ſoient les pledz, que ſont en la dite forme deſlaiez, & les pledes la ou les juſtices ſont en diverſes opinions, recordes & termiez.

Et en meiſme la manere ſoient les bills terminez, que liverez ſerront en Parlement ſi avant, come lei & reſon le demaunde.

Pulton's Stat. 4 Edw. III. *cap.* 14.

III. To back which by a Statute made 4 *Ed.* III. it was accorded that a Parliament ſhould be holden every Year one, and more often, if need be; ſo that it is plain, this Statute was but declaratory of the ancient Cuſtom of the Realm in that Point.

Idem. Stat. 36 Edw. III. *cap.* 10.

IV. Beſides by the Statute of the 36th of the ſame King, it was enacted, That for Maintenance of the Articles of that Parliament, and Statutes, and Redreſs of diverſe Miſchiefs and Grievances, which daily happened, a Parliament ſhould be holden every Year, as at another Time has been ordained by another Statute.

V. In a Parliament held the 50th Year of this Reign,

Rot. Parl. 50 Edw. III. N°. 186.

Item, prie la Commune, que pleiſe eſtablir par eſtatute, en ceſt preſent Parlement, que cheſcun an ſoit tenus un Parlement, de faire corrections en Roialme des errors & fauxities, ſi uuls y ſoint trovez.

Reſpons.

En droit du Parlement cheſcun an il y a ent eſtatutz & ordinances faits les queux ſoient duement gardes & tenus.

VI. Moreover in the Parliament 1 *Richard* II. the Commons made uſe of the Ordinance 5 *Edward* II. by way of Petition; which, together with the Anſwer that was given thereunto, I have thus tranſlated.

Rot. Parl. 1 Rich. II. N°. 95.

Item, Becauſe many People are delayed in the King's Court of their Demands; for that ſometimes the Party alledges, that the Demandants ought not to be anſwered without the King, and ſometimes the Party Plaintiff alledges in like Manner, and alſo many People are aggrieved by the King's Miniſters, againſt Right of which Grievances a Man cannot have Remedy without a Parliament: May it pleaſe our Lord the King to hold a Parliament once a Year, at the leaſt, and that in a Place convenient; and that in ſuch Parliaments the Pleas ſo delayed, and the Pleas in which the Juſtices of different Opinions may be recorded and determined; and that in like manner ſuch Bills as ſhall be delivered in Parliament may be determined, as Reaſon and Law ſhall require.

Reſpons.

Vid. Stat. 14 Edw. III. *cap.* 5.

As for the holding a Parliament every Year, let the Statutes made for the ſame be held, the King will have his Pleaſure. And as for the Pleas, concerning which the Juſtices differ in Opinions, there are Statutes

Statutes already enacted thereupon, which the King wills that they may be kept and firmly held.

VII. Furthermore, amongſt other Cauſes for which the Parliament of 2 *Richard* II. was called, the Lord Biſhop of *St. David*'s by the King's Command declared,

Secondment, pur ce que autre foiz a la priere des ſeigneurs & communes eſtoit ordaignez & aſſentuz, que parlement ſerroit tenuz cheſcun an, meſme noſtre Seigneur le Roy, veuillant tout dis faire tenir tout bone covenant & mettre en execution cheſcun ordinance fait en ſes parlementz ſi ad il pur tant fait ſomondre ce parlement. Rot. Parl. 2 Rich. II. No. 4.

Theſe are Inſtances produced to prove that the Judges of *Weſtminſter* were not to follow their own Diſcretions and Opinions in Matters of Difficulty, which aroſe in their reſpective Courts; but the Judgment of ſuch extraordinary Caſes were to be directed and regulated in Parliament, where the ultimate, deciſive, and judicial Power was lodged, and not in the Judges whoſe Authority was always ſubſervient to that of the ſupreme Court of the Kingdom.

VIII. Laſtly, at another Parliament held at *Weſtminſter* 11 *Richard* II. *Thomas de Woodſtock*, Duke of *Glouceſter*, the King's Uncle, and *Thomas de Arundel*, Biſhop of *Ely*, *de communi conſenſu totius parliamenti*, ſent to the King then at *Eltham*, *qui ſalutarent eum ex parte* Knighton de Eventibus Angliæ, *col.* 2681. *lin.* 33.

1. *Procerum*,
2. *Et Communium*,

parliamenti ſui, ſub tali ſenſu verborum, ei referentes vota eorum:

DOmine Rex,

1. *Proceres & Domini*,
2. *Atque totus populus communitatis*

parliamenti veſtri cum humillima ſubjectione ſe commendant excellentiſſimo — regalis dignitatis veſtræ cupientes proſperum iter invincibilis honoris veſtri contra inimicorum potentiam, & validiſſimum vinculum pacis & dilectionis cordis veſtri erga ſubditos veſtros in augmentum commodi veſtri erga Deum & ſalutem animæ veſtræ, & ad inedicibilem conſolationem totius populi veſtri quem regitis. Ex quorum parte hæc vobis intimamus, Quod ex antiquo ſtatuto habemus & conſuetudine laudabili & approbata, cujus contrarietati dici non valebit, quod Rex noſter convocare poteſt Dominos & Proceres regni atque Communes ſemel in anno ad parliamentum ſuum, tanquam ad ſummam curiam totius regni: In qua omnis æquitas relucere deberet abſque qualibet ſcrupuloſitate vel nota, tanquam ſol in aſcenſu meridiei, ubi pauperes & divites pro refrigerio tranquillitatis & pacis, & repulſione injuriarum, refugium infallibile quærere poſſent, ac etiam errata regni reformare, & de ſtatu & gubernatione regis & regni cum ſapientiori

conſilio

conſilio tractare, & ut inimici regis & regni intrinſeci & hoſtes extrinſeci deſtruantur, & repellantur, quomodo convenientius & honorificentius fieri poterit, cum ſalubri tractatu in eo diſponere & prævidere, qualiter quoque onera incumbentia regi & regno levius, ad ediam communitatis, ſupportari poterunt.

Videtur etiam eis, quod ex quo onera ſupportant incumbentia, habent etiam ſupervidere qualiter & per quos eorum bona & catalla expendantur; i. e.

That by ancient Statute and Cuſtom laudable and approved, which no Man could deny, the King might once in the Year, convene his Lords and Commons to his Court of Parliament, as to the higheſt Court of the whole Realm.

In which Court (they ſaid) all Equity ought to ſhine forth, without the leaſt Cloud or Shadow, like the Sun in his Meridian Glory; where Poor and Rich, refreſhed with Peace and Eaſe of the Oppreſſions, may always find infallible and ſure Refuge and Succour: The Grievances of the Kingdom may be redreſſed, and the State of the King, and Government of the Realm, debated with wiſeſt Counſels; the domeſtick and foreign Enemies of King and Kingdom deſtroyed and repelled; and that the Charges of both may be ſuſtained with more Eaſe to the People.

It ſeemed alſo to them, that ſince they bare their Charges, they ſhould have a Right to inſpect, how and by whom their Goods and Chattels were expended.

Thus we have ſeen the Antiquity of calling annual Parliaments; it being truly obſerved,

Sir Edward Turner, *then Speaker of the Houſe of Commons, his Speech to* K. Char. II, *Friday*, February 8, 1666. *on a Prorogation*, fol. 12.

I. That nothing conduceth more to the Happineſs of a Nation, than a right Underſtanding between the Prince and the People; and nothing more advanceth this Correſpondence, than frequent Meetings in Common Council: For by the Wiſdom of our Fore-Fathers, the Security of our Lives, Liberties, and Properties, is lodged in our *Engliſh* Parliaments: And that ſo gracious have been our Kings, that for the Satisfaction of their People, they made ſeveral Laws, ſome for Triennial, ſome for Annual Parliaments.

Lord Chancellor Nottingham's *Speech to both Houſes of Parliament*, March 6, 1678-9, fol. 18.

II. We uſe to ſay, and ſay truly, that the King, when ſeated in Parliament, is then in the Fullneſs of his Majeſty and Power, and ſhines forth with the brighteſt Luſtre.

Ibid. fol. 9, 10.

III. For a Parliament is the great, the wiſe, and powerful Council of this Nation.

K. Charles II. *his Letter, directed to the Speaker of the Commons from* Breda, April 14, 1660, f. 4.

IV. And laſtly, his late Majeſty, in a Letter ſent to the Speaker of the Houſe of Commons from *Breda*, declared, That he did believe

Parliaments

Parliaments to be ſo vital a Part of the Conſtitution of the Kingdom, and ſo neceſſary for the Government of it, that he well knew, neither Prince nor People could be in any tolerable Degree happy without them.

And therefore for the Judges of *Weſtminſter-hall* to preſume to give any deciſive Opinions in Matters of high Deliberation, and the greateſt and weightieſt Affairs, which may concern the Well-being of the Church, and all other Intereſts of the Crown, and Nation, what is it, but an intolerable Uſurpation, both upon the King's Prerogative Royal, and the Rights and Being of Parliaments? Which conſequently alters and deſtroys the whole Frame and Conſtitution of the Government itſelf.

So that there is no Reaſon in the World for thoſe Judges, under the vain and abſurd Notion of being the only Keepers and Expounders of the Laws for Publick Good, to deny to adjourn all ſuch Caſes *uſque ad proximum Parliamentum, propter difficultatem*, or rather, *propter impotentiam & defectum poteſtatis ſuæ*, as belonging *ad aliud forum & ad aliud examen*, which, by the Law and Cuſtom of the Realm, was to be held *ſemel in anno*, and of which Law and Cuſtom they were obliged by their ſolemn Oaths, made *coram Deo, Angelis, & Hominibus*, before God, Angels, and Men, to take Notice, and for what concerned them, bound to obſerve and keep, leaving it to the Pleaſure of the King, whether he would call an annual Parliament, or not, in which ſuch Caſes might be conſidered of and determined: For Judges ought to determine or propheſy *de futuris*.

Now it being ſo evident, *quod ex antiquo ſtatuto, & conſuetudine laudabili & approbata, cujus contrarietati dici non valebit*, that a Parliament was to be holden once a Year, or oftener, if need were, the Judges of *Weſtminſter-Hall* could have no Colour to proceed haſtily to Judgment, eſpecially in Caſes of ſuch Weight, which either directly, or by Conſequence, affected the whole Nation, under Pretence that there muſt otherwiſe have been Delay or Defect of common Juſtice, for want of a Parliament to redreſs Grievances.

Since it was no more to be ſuppoſed that a Parliament ſhould be diſcontinued beyond the legal Time of meeting, than that there ſhould be no Judges ſeen in *Weſtminſter-Hall*, or that the Courts there ſhould not be ſuffered to ſit in Term-time: For the one depended upon the Will and Pleaſure of the King no more than the other, and the former was as firmly eſtabliſhed, as the latter is or can be.

So that for any Judges to have fancied this, would have been a ſtrong Inſtance of what Mens Wits could do when once they have reſolved to break through any thing.

But no Pretence of Neceſſity or Danger, no Inſinuation of doing the Prince Service, nor any Excuſe, that what was done, was done out of a good Intention for general Benefit, or to ſay, that was done ac-

cording to Conſcience, or the beſt Meaſure of a Man's Underſtanding, can by the Rules of Juſtice be allowed to juſtify any Advice or Counſel, which tends to overthrow the Conſtitution of the Kingdom, and to ſubvert the Laws of the Land; ſuch Advice and Counſel never can, nor ever ought to be juſtified by any Circumſtance or Occaſion whatſoever.

The Ld. Keeper's Speech in the Upper Houſe of Parliament, November 3, 1640. p. 14. *Speeches and Paſſages of Parliament, from the 3d of* Nov. 1640. p. 14.

And it is further to be noted, that if any under the Prince, as his Inſtrument, that have had the diſtributing of Juſtice to his People, have not done as they ought, the Fault is their own; for, according to the Golden Rule and Maxim of the ROYAL MARTYR, *He ſerves the King beſt, that ſerves him with Honeſty and Integrity.*

[a] *A Declaration of diverſe Rights and Liberties of the People, to the King's moſt excellent Majeſty*, Anno 3 Car. I.

[b] Pulton's Stat. 3 Car. I.

[a] And give me leave to add out of the *Petition of Right* (to which he gave his Royal Aſſent) that all Officers and Miniſters ought to ſerve the King according to the Laws and Statutes of this Realm [b], as they tendred the Honour of his Majeſty, and the Proſperity of this Kingdom.

[c] *Lib.* 2. *cap.* 2. *p.* 50, 51.

Sir *Thomas Smith*, Doctor of Laws, and Secretary of State to Queen *Elizabeth*, in his Tract *De Republicâ & Adminiſtratione Anglorum* [c], informs the learned World, what the ancient Government of *England* was, whoſe Words are theſe:

De Parlamento [Anglorum] *ejuſque Poteſtate.*

IN Comitiis Parlamentariis poſita eſt omnis auguſtæ abſolutæque poteſtatis vis: Quippe quemadmodum robur & virtus Angliæ dicuntur in acie reſidere, quia illic cum dynaſtia cæteraque nobilitate plebeque Rex ipſe adeſt; ita quoties in pace de rebus arduis deliberatio inciderit, dynaſtæ regulique præſtantioris in republica partis vice defunguntur; equites, armigeri, nobiles, & plebeii, reliquæ multitudinis locum obtinent; cleri nomine conveniunt præſules; mox animam quaſi & colophonem addit juſſus principis.

Quod bonum felixque regno totique reipublicæ ſit monent, ſimulque ſuper eo conſilia communicant; tum poſt bene longum deliberandi ſpatium, ter recitata pro more loci ſchedula, & in utraque domo rationibus agitata, ſeorſimque ambarum partium calculis comprobata, regio demùm aſſenſu confirmatur: quodque ſic geſtum eſt, principis & univerſi regni factum interpretamur.

Proindè nullus poſtea cuiquam oboriri debet querelæ locus; ſed quia reſcindi amplius non poteſt, & promulgatis ſemel legibus omnes tenemur acquieſcere, firmum, ſtabile, & ſanctum appellamus; & legis apud nos vigorem habet, quicquid hujuſmodi conſenſus perfecerit.

Parlamentaria comitia veteres leges jubent eſt irratas, novas inducunt; præſentibus juxta ac futuris modum conſtituunt; jura & poſſeſſiones hominum privatorum commutant; ſpurios natalibus reſtituunt; cultum divinum ſanctionibus corroborant; pondera & menſuras variant; jus in regno ſuccedendi præſcribunt; incerti juris controverſias dirimunt,

ubi

ubi nihil lege cautum fuit; cenſum agunt; capitationes & vectigalia indicunt; delictorum gratiam faciunt; afflictas & majorum ſceleribus perditas familias erigunt; vitæ neciſque poteſtatem in eos obtinent, quos ad hujuſmodi diſquiſitiones princeps avocaverit.

Atque, ut concludam breviter, quicquid in centuriatis comitiis, aut in tribunitiis populus Romanus efficere potuiſſet, id omne in comitiis Anglicanis, tanquam in cœtu

1. *Principem,*
2. *Populumque*

repræſentante, commode tranſigitur.

Intereſſe enim illo conventu omnes intelligimur cujuſcunque amplitudinis, ſtatus aut dignitatis, princepſve aut plebs fuerit, ſive per teipſum hoc fiat, ſive per procuratorem.

Nam omnibus peræque gratum eſſe oportet, quicquid ex ſenatus conſulto parlamentario profectum eſt, ut quod pro imperio & poteſtate decernat

1. *Sereniſſimorum principum majeſtas,*
2. *Epiſcopi regulique,*
3. *Equites & cives,*

qui eo a provinciis & municipiis ablegati plebem referunt.

Which being tranſlated runs thus:

Of the Parliament, and Powers thereof in Parliamentary Aſſemblies, all the Strength of Imperial and Abſolute reſideth. For that, as the Strength and Courage of *England* are ſaid to conſiſt in the Militia, becauſe there, together with the great Officers, and the reſt of the Nobility and common People, the King himſelf is preſent; ſo whenever in Time of Peace, Matters of weighty Moment are to be debated, the Officers and the Noblemen act the more honourable Parts in the Common-Wealth; the Knights, Eſquires, Gentlemen and Plebeians, anſwer to common Soldiers; the Prelates are aſſembled in the Name of the Clergy, and then the Prince's Aſſent gives as it were Life and Perfection to the whole.

They adviſe what may be beneficial and happy to the Kingdom, and the whole Community, and conſult together thereupon; then after a Debate of ſome Length, a Scroll having been thrice read, according to Cuſtom, and argued in both Houſes, and carried by the Votes of each Houſe apart, is finally confirmed by the Royal Aſſent; and what is ſo paſs'd we look upon as the Act of the Prince, and of the whole Kingdom.

And therefore no Man afterwards muſt pretend to make Complaints, for becauſe it cannot be reſcinded, and Laws being once publiſhed we are all bound to acquieſce in them, therefore we call them firm, ſtable, and ſacred; and that has amongſt us the Force of a Law, that hath been thus aſſented to.

Parliamentary Aſſemblies 1. Repeal former Laws; 2. Enact new ones; 3. Regulate Times preſent and to come; 4. Transfer the Rights and Poſſeſſion of private Perſons; 5. Legitimate Baſtards; 6. Make Laws concerning the Worſhip of God; 7. Change Weights and Meaſures; 8. Settle the Right of Succeſſion; 9. Determine Controverſies where the Law is uncertain, or has made no Proviſion; 10. Value Mens Eſtates; 11. Impoſe Pole-Money and Cuſtoms; 12. Pardon Offences; 13. Reſtore Families that are ruined by the Delinquencies of their Anceſtors; 14. They have Power of Life and Death over thoſe that are employed by the Prince in ſuch Caſes.

And to conclude in a Word, whatever the People of *Rome* could do in their *Comitia Centuriata*, or *Tribunitia*, all thoſe Things are properly tranſacted in *Engliſh* Parliaments, as being Aſſemblies in which both

1. Prince, and
2. People

are repreſented; for we are all ſuppoſed to be preſent in that Aſſembly, of whatever Quality, State, or Dignity, whether Noble or Ignoble, either in Perſon or by our Repreſentatives.

For whatever proceeds from an Act of Parliament, ought to be equally acceptable to all, as being authoritatively decreed

1. By the Majeſty of moſt Serene Princes,
2. By Biſhops and Noblemen, and
3. By Knights and Citizens,

who being deputed by the Counties and Burroughs, repreſent the Commonalty of the Land.

By this we may ſufficiently be informed, what entire, plenary, and abſolute Authority, Preheminence and Juriſdiction, were inſeparably annexed, united, and belonging to Parliaments.

And for a full Confirmation that theſe were no Fancies of the learned and loyal Secretary, I will add thereunto the higheſt Proof and Evidence that can be given, *viz.* an old Statute made in the 17th Year of *Edward* II.

Placito coram Domino Rege apud Weſtmin. de termino Sanctæ Trinitatis Anno Regni Regis Edwardi filii Regis Edwardi 17°.

Les Choſes que ſeront eſtablir pur l'eſtate.

I. *De noſtre Seigneur le Roy, & de ſes Heirs.*

II. *Et pur l'eſtate du Roialm, & du Peuple, ſoient tretez en Parliaments, par noſtre Seigneur le Roi, & par l'aſſent*

1. *Des Prelats, Countes, & Barons,*
2. *Et la Communalte du Reaum,*

auxint come ad eſte accuſtome ceo en arere.

Thus

Thus the Statute in general; but to be more particular.

I. Whatever concerned the eſtabliſhing of the State of the King and his Heirs.

II. Whatever concerned the Eſtate of the Realm, and People, was to be treated of in Parliaments.

III. Not by the Judges of *Weſtminſter Hall*, but according to all the Rules of Equity and Juſtice in the World, and the admirable Order and firmeſt Compoſition of the beſt Governments: *viz.*

1. By the King;
2. By the Prelates, Earls, Barons; and
3. By the Communalty, or the Commons of the Realm.

This was no new Law, introduced in the Reign of *Edward* II. It was only declarative, what the *Lex & Conſuetudo Parliamenti* was in Times paſt.

For as for the Judges, it was ſolemnly declared, *per Seigniours du Parlement, ſur deliberation & adviſement, & per aſſent du Roy* [*R.* II.] in theſe Words: *Quex bas courts & places ne ſont que executors d'auncien leys, & cuſtumes du roialm, & ordinances & eſtabliſhments du Parlements.* Rot. Parliam. 11 R. II. pars 3. N° 14.

Here we have a direct Text, which warrants the general Propoſitions I at firſt laid down: *viz.*

I. That the redreſſing of the State of the Realm, in ſuch Things which required Amendment, and that in particular the final determining of all ſuch Caſes where the Law failed, and no Remedy had been ordained, was the proper Buſineſs, not of any Inferior Courts, but of the ſupreme Court of the Kingdom, the Parliament. *Several Concluſions drawn from the general Propoſitions which have been laid down in this Chapter.*

II. Or where Points in former Statutes had need of Expoſition, that was not to be done but by Parliament.

III. Or where the Judges of *Weſtminſter Hall* differed in their Opinions, what the Law was in ſeveral Caſes; the Right of declaring the Law was only in Parliament.

Becauſe *les bas courts & places* in *Weſtminſter Hall*, were but Executors of the ancient Laws and Cuſtoms of the Realm, and Ordinances and Eſtabliſhments of Parliament.

IV. Which was to be held *once* at leaſt in every Year.

Coke, lib. 10. in Præfat.

For *Andrew Horn*, whom Sir *Edward Coke* calls *Vir eruditus ſatis & prudens*, and who flouriſhed *ſub regno Edvardi primi*, in his Chapter *de Abuſion de la Common Ley*, tells us, that

Le Myrrour des Juſtices, *cap.* 5. *ſect.* 1. *p.* 282.

Une abuſion eſt, que ou les Parlements ſe duiſſent faire pur le ſalvation des almes des treſpaſſors, & ceo a Londres & deux foitz per An, la ne font ils forſque rarement, & alia volunt le Roy, pur aides & cuilets de treſeore.

So that it was one Abuſion in the Law, and a main one too, that whereas Parliaments ought in thoſe Times to be held twice a Year, they were then but rarely held at the Pleaſure of the King, for Aids and getting of Money.

CHAP.

CHAP. II.

Several Authorities to prove, that by the ancient Law and Cuſtom of England, *when any Caſe of Difficulty did happen to ariſe in* Weſtminſter Hall, *the Judges adjourned to ſuch Caſes,* propter Difficultatem, uſque ad proximum Parliamentum.

BRACTON, a famous Judge in the Reign of King *Henry* III. tells us, *Si aliqua nova & inconſueta emerſerint, & quæ prius uſitata non fuerint in regno, ſi tamen ſimilia evenerint, per ſimile judicentur, cum bona ſit occaſio a ſimilibus procedere ad ſimilia. Si autem talia nunquam prius evenerint, & obſcurum & difficile ſit eorum judicium, tum ponantur judicia in reſpectum uſque ad Magnam Curiam* (*i. e.* to the Parliament) *ut ibi per concilium curiæ terminentur.* Bracton, *lib.* 1. *cap.* 2. *fol.* 1. b.

And he gives the following Reaſon, wherefore ſuch an Adjournment ought to be: *viz.*

Licet ſint nonnulli qui de propria ſcientia præſumentes, quaſi nihil juris ignorent, nolunt alicujus conſilium expetere; in quo caſu honeſtius & conſultius eis foret conſilium habere quam aliquid temere definire, cum de ſingulis dubitare non ſit inutile.

Purſuant to this ancient Rule of Law, the Statute of *Weſtminſter* the Second was made *ann.* 13 *Edw.* I. which enacts, That whenſoever from thenceforth it ſhould fortune in the Chancery, that in one Caſe a Writ is found and in like Caſe falling under like Law, and requiring like Remedy is found none; *Concordent clerici de cancellaria in brevi faciendo vel atterminent, quærentes in proximum Parliamentum; & ſcribantur caſus, in quibus concordare non poſſunt, & referant eos ad proximum Parliamentum.* Coke's 2d Inſt. *fol.* 405. Stat. Weſtm. ii. *cap.* 24.

From hence we may obſerve, that though the Court of *Chancery* is only mentioned in this Statute, yet the Reaſon of the Statute extends (as we ſhall ſhow by and by) to the reſt of the Courts in *Weſtminſter Hall*, in Caſes of Difficulty. And indeed *Bracton* himſelf proves it: for he ſays in general,

" If any new and unuſual Matters ariſe in Judgment, the giving of " Judgment ought to be reſpited 'till the Sitting of a Parliament, that " there they may be conſidered of and determined." For which he gives

gives this Reaſon: That though ſome preſume to that Degree upon their own Learning and Judgment, as if they had ſo digeſted every Point of Law, that they were above aſking the Advice of any; yet it was more honourable and ſafe for them to have Advice, than to determine any Thing raſhly, and over haſtily.

Inter communia de Termino S. Trinit. de ann. 28 Edw. I. penes Rememoratorem Dom. Theſaur. in Scaccario remanente. Cantebr. pro epiſc. Elienſi.

In *Trinity* Term, *Ann.* 28 *Edw.* I. it appears, That upon *Saturday*, being the Feaſt of St. *Barnabas*, *Robert Hereward*, Steward to the Biſhop of *Ely*, came, and on the Biſhop's Behalf ſhewed to the Treaſurer, the Barons, and others of the King's Council preſent in the *Exchequer*, that the ſaid Biſhop claimed lately before the King being then at *Ely*, this Liberty, *viz.* That no Steward nor Marſhal, nor any other Miniſter of the King ought to execute his Office within the Iſle of *Ely*, but by the Biſhop's Miniſters; and that the King adjourned the ſaid Biſhop to proſecute that his Claim, either in Perſon or by Attorney, at the King's Return to *London*, before the King's Council; and to ſhew and alledge for himſelf whatever, *&c.*

Wherefore the ſaid *Robert*, in the Biſhop's Name, offered to proſecute the ſaid Claim, and to ſhew and alledge for the ſaid Biſhop, how he claimed to have the ſaid Liberty, *&c.*

Whereupon, *Theſaurario & aliis de concilio regis ibi præſentibus viſum fuit, quod diſcuſſio ſuper negotio prædicto habeatur in Parliamento, coram eodem & concilio ſuo, & non alibi*, unleſs the King ſhould expreſsly command otherwiſe: And therefore it was ordered, That the ſaid *Robert*, or ſome other for the Biſhop, ſhould proſecute the Matter *ad proximum Parliamentum.*

Inter communia de Term. S. Mich. ann. 4 Edw. II. in Scaccario de Mag. Will. de Teſta adjornato ad Parliamentum.

In *Trinity* Term, 4 *Edw.* II. *William Servats*, Citizen of *London*, came before *H. de Lacy* Earl of *Lincoln*, then the King's *Locum Tenens*, the King himſelf being in *Scotland*; *& coram Theſaurario, Baronibus, Juſticiariis, de utroque Banco, & aliis de concilio regis*; and exhibited a Petition to them, the Sum of which was,

That himſelf and one *Champnez* had been ſummoned by *William Teſta* to appear at a Court held before Maſter *Raymund, generalis auditor cauſarum curiæ domini Bertrandi Albienſis Epiſcopi, Camerarii domini Papæ*, in an Action of Debt, at the Suit of one *Perys:* and that notwithſtanding the ſaid *William Servats* had ſerved the ſaid *William Teſta* with the King's Prohibition; yet the ſaid *Servats* and *Champnez* were excommunicated under the Seal of the Pope's Chamberlain, which (ſaith the Petition) was prejudicial to the Royal Dignity of our Lord the King; and if it were ſuffered, *poit tourner a Roi & a ſon People a grand hounte. & damage:* And in the Concluſion of the Petition, prays an Attachment againſt the ſaid *William Teſta*; and produced a Copy of the Prohibition.

This done, *William Teſta* was ordered to appear, who confeſſed, that he had cited the ſaid *Servats* and *Champnez* as aforeſaid; but that he had certified the Citation to the ſaid Auditor, before he had received

ceived the King's Prohibition: But that ſince the Receipt thereof, he had attempted nothing againſt the Tenor of the ſaid Prohibition.

After which the Record proceeds thus: That foraſmuch as the ſaid *William Teſta*, at his coming into *England*, when he was admitted *ut Nuncius Papæ*, had been enjoined *ex parte domini Regis*, not to attempt any thing *contra Regem & conſuetudinem Regni*, in Derogation of the Royal Dignity, *&c.*

And foraſmuch as it was manifeſt, that Pleas of Debt and Goods, concerning the Subjects of the Kingdom, and eſpecially Matters of Contract made within the Realm, which did not relate to Matters teſtamentary or matrimonial, belonged wholly to the Secular Courts, and to the King's Crown and Dignity: And foraſmuch as the ſaid *William Teſta* acknowledged, that he had cited the ſaid *Servats* and *Champnez* to appear out of the Realm, in ſuch a Plea, viz. *de ipſo magiſtro Willielmo, inde ad judicium.*

And the ſaid *William Teſta* was thereupon adjourned *de die in diem, ad audiendum & recipiendum quod curia inde conſideraverit, &c.*

After all which the Record concludes: *idem Willielmus de Teſta adjornatur ſuper præmiſſis ad proximum Parliamentum domini Regis.*

But it may be objected, That there is no mention made in theſe Authorities, that the Judges adjourned both theſe Caſes to the next Parliament, *propter difficultatem.* OBJECTION.

To which I anſwer, That though it be not expreſsly declared to be *propter difficultatem*; yet, from the Account given of the Proceedings in both the Records, it is plain, that if it was not by reaſon of Difficulty in Point of Law, it muſt then be for the Weightineſs of the Matters; which made the Judges to ſee it very good Reaſon as well as their Duty not to determine thoſe Caſes themſelves, but to adjourn them to Parliament, eſpecially the Caſe of *William de Teſta.* ANSWER.

For the Judges could not but very well remember, that he had been impeached and convicted *in pleno Parliamento tento anno* 35 *Edw.* I. *ſuper variis novis & intolerabilibus gravaminibus, oppreſſionibus, injuriis, & extortionibus, authoritate domini Papæ communitati* [*Angliæ*] *factis:* Which, if they ſhould have been tolerated, would manifeſtly tend to the Decay of God's Worſhip, the Ruin of the *Engliſh* Church; the Prejudice, Hurt, and Diſheriſon of the Crown, and of the Power, Juriſdiction, and Dignity of the *Engliſh* Diadem; and the total Subverſion of the State of the Kingdom, and the Laws and Cuſtoms thereof. Thus far out of the Impeachment againſt *William de Teſta.* Plac. Parliam. *fol* 376. *uſque* 385.

But, beſides all this, the better to prepare the Reader's Underſtanding in the Reſearch we have in hand, it will not be improper in this Place to acquaint him with the Statute of 24 *Hen.* VIII. which ordained, That no Appeals ſhould be uſed, but within this Realm; wherein among other Things it is declared, Pulton's Statutes, 24 *Hen.* VIII. *cap.* 12.

No Appeals to be uſed, but within this Realm.

1. That the King's moſt noble Progenitors,
2. And the Nobility,
3. And the Commons of the Realm,

Had at diverſe and ſundry Parliaments, as well in the Time of *Edw.* I. *Edw.* III. *Rich.* II. *Hen.* IV. and other noble Kings of this Realm, made ſundry Ordinances, Laws, Statutes, and Proviſions, for the entire and ſure Conſervation of the Prerogative, Liberties, and Prehemineſnces of the Imperial Crown of this Realm, and of the Juriſdiction ſpiritual and temporal of the ſame; to keep it from the Annoyance as well of the See of *Rome*, as from the Authority of other foreign Potentates, attempting the Diminution and Violation thereof; as often and from time to time as any ſuch Annoyance or Attempt might be known or eſpied.

What the Judges had to do in thoſe important and weighty Matters.

Now upon a very ſlight Speculation into this great Law, I think one may without any Stiffneſs and Opiniatritie from thence fairly conclude, That the Judges of *Weſtminſter Hall* had nothing to do in thoſe ſo momentous and ſo high Points, which concerned the perpetual State of the Kingdom, unleſs perhaps their humble Advice was aſked upon ſome particular Queſtion: For all thoſe Ordinances, Laws, Statutes, and Proviſions, ſaid to be made in the Time of *Edw.* I. and other Kings of this Realm, were made

By the King, and the Lords, and the Commons of this Realm.

I will not digreſs farther, but will return and proceed to ſhew, That it was the current Practice of ancient Times for the Judges to adjourn Cauſes, *propter difficultatem, uſque ad proximum Parliamentum.*

Inter memorand. de Parl. Ed. II. tento apud Lincoln. in quindena S. Hilarii, ann. reg. dicti Regis nono. N° 1.

In a Parliament held at *Lincoln, anno* 9 Edw. II. *Injunctum fuit Cancellario, & Theſaurario, & Juſticiariis, de utroque banco* (ſaith the Record) *quod ipſi negotia coram eis in placeis ſuis pendentia, quæ extra Parliamentum non poſſent terminari, ſub compendio in ſcriptis redigi facerent; & ea in dicto Parliamento referrent, ita quod ibi de eiſdem fieret quod deberet.*

Now certainly let any Man of Senſe and Honeſty read and weigh the Import of this ſo plain an Authority; and he muſt acknowledge,

Many Caſes in Law happened in ancient Times in inferior Courts, which were no where determinable but in Parliament.

1. That there were Caſes of ſuch a Nature, which in thoſe Times uſually fell out, and happened in the reſpective Courts of *Weſtminſter Hall*, which neither could, nor ought, according to the Law of the Land, to be determined *extra Parliamentum.* And how that Law came to be totally altered and changed by Parliament, has never yet appeared to me.

2. That the Chancellor, Treaſurer, and the reſt of the Judges, were enjoined to ſtate ſuch Caſes in Writing, and to report or declare them in Parliament:

3. So

3. So as in Parliament they might be finally reſolved and determined.

My Concluſion from hence ſhall then be, That the Judges of *Weſtminſter Hall* did not in old Times aſſume or exerciſe ſuch a ſupereminent Power, as ſome of their Succeſſors have in latter Times done.

In the 17th Year of King *Edward* II. *Roger de Mortimer* with ſeveral others rebelled againſt that King: Whereupon an Inquiſition was taken, and thereby it was found, That *Adam* Biſhop of *Hereford* was engaged in the Rebellion. The Inquiſition being returned into the *King's Bench*, *præceptum eſt Vicecomiti Hereford, quod attachiaret prædictum Epiſcopum, &c.* Who appearing in Court, pleaded to the Juriſdiction thereof, in theſe following Words: *viz.*

Placit. coram dom. Reg. apud Wigorn. Hereford. Glouceſt. & Weſtmon. de term. S. Hilar. ann. reg. Edw. fil. Edw. 17.

Quod ipſe eſt Epiſcopus Hereford, ad voluntatem Dei, & Summi Pontificis, & quod materia prædictorum articulorum ſibi impoſitorum adeo ardua eſt, quod ipſe non debet in curia hic ſuper prædictis ſibi impoſitis reſpondere, nec inde reſpondere poteſt abſque offenſa divina, & ſanctæ Eccleſiæ.

Whereupon the Court ordered him perſonally to appear *de die in diem ad audiendum judicium ſuum in hac parte.*

Thus the Matter ſtood 'till the next Parliament, in which we find the Biſhop charged, *coram ipſo domino Rege in pleno Parliamento*, upon the ſame Inquiſition, with ſome additional Articles: To all which he pleaded the ſame Plea as before; and then was delivered to the Archbiſhop of *Canterbury* as his Ordinary, to have him *coram domino Rege* at a certain Day.

It is true, he was afterwards tried in the *King's Bench*, and the Jury found, That he was *de concordia & adhærentia Rogeri de Mortuomari; ideo conſideratum eſt* [*per curiam*] *quod prædictus Epiſcopus tanquam convictus, &c.*

And it is as true, that in the Parliament 1 *Edw.* III. his Conviction was reverſed, for ſeveral Errors; amongſt which this was one:

Ex Rot. Pat. 3 Edw. III. pars 1. m. 33. Adnullatio recordi, & proceſſus & judicii ſuper Adam. Wigorn. epiſc.

*Dicit etiam Epiſcopus, quod in prædicto recordo continetur, quod ipſe die Veneris proximo poſt feſtum Sancti Petri in cathedra venit apud Weſtmonaſterium, coram ipſo domino Rege in pleno Parliamento, &c. nullus dies datus ei fuit in Parliamento, &c. unde petit judicium.**

That is, There was no Day entered upon Record in the *King's Bench*, when the Biſhop ſhould appear in Parliament; for want of which the Cauſe was diſcontinued: And this the Biſhop aſſigned for plain Error.

* *By this it appears, that the Practice of thoſe Times was in the Courts of* Weſtminſter Hall, *whenever a Cauſe was adjourned into Parliament, to enter the Continuance of it upon the Rolls, as the Judges of Aſſize do at this Day, when they adjourn a Cauſe into the* Common Pleas, propter difficultatem.

Now

Now for the better underſtanding of this extraordinary Caſe, we muſt farther conſider, That there was a ſtrong opinion in thoſe Days, that the Biſhops were not ſubject to the Temporal Power in criminal Matters, but were to be remitted to the Correction and Cenſure of the Pope alone: And this is made out by the following Petition of the whole Body of the Clergy, in the Parliament 18 *Edw.* III. which runs in this Form:

Rot. Parliam. 18 Edw. III. n. 23. Artic. 1. inter Petitiones Cleri.

A noſtre Seigniour le Roy prient l'Erceveſque de Cantirbirs, & autres Prelates, & la Clergie de ſon Roialm, que pleiſe à lui en maintenance del eſtate de ſeint Eſgliſe, grantier & ordiner, que nul Erceveſque ne Eveſque ſoit deſormes empeches ne araynez, devant ſes juſtices en cauſe criminale, per queconque voie, deſicome ſur tiele cauſe nule alme ne les poet jugger ſi noun le Pape ſoulement.

To which that King gave Anſwer:

Quant au primer article, il avys, que en cauſe de crime nule Erceveſque ne Eveſque ſoit empeſchez devant les juſtices, ſi le Roy ne le command eſpecialment, tanque autre remedie ſoit ordeine.

Concluſions to the main Point in Queſtion.

From all which, theſe Concluſions, as to the main Point in Queſtion, ſeem to me to be with great Clearneſs deducible:

I. That the Biſhops pleading in the *King's Bench*, that he was Biſhop of *Hereford*, at the Will of God and the Pope, and that the Matter of the ſaid Articles, wherewith he was charged was ſo difficult, that he ought not to make Anſwer to that Charge in that Court, nor could make Anſwer thereunto, without offending God and Holy Church; was no other than a direct Plea to the Juriſdiction of the Court.

II. And that the then Judges of the *King's Bench* did not aſſume to themſelves a Power by their Votes to over-rule that Plea in a ſummary way, upon Pretence that in caſe they ſhould miſtake the Law, yet the Biſhop, if not executed as a Traytor, or his Heirs, might afterwards have a Writ of Error in Parliament: But the Judges, according to the legal Practice of thoſe and ſucceeding Ages, 'till modern Times, paid ſo much Reverence to a Parliament, that they ſtayed all farther Proceedings againſt the Biſhop, and left the Plea to the weighty Conſideration and Judgment of the next Parliament.

The Year Book, 2 Edw. III. *fol.* 7.

In *Hilary* Term, *ann.* 2 *Edw.* III. one *Elizabeth Caller* ſued an Execution for Damages recovered upon the Statute of *Hue and Cry*, upon which the Sheriff of *Staffordſhire* returned, that he had levied Ten Marks upon the Biſhop of *Coventry* and *Lichfield*'s Tenants within the

the Hundred of *H.* To which the Biſhop ſaid, That the Tenants of that Hundred were diſcharged by a Charter of Exemption granted by King *Richard* I. Whereupon ſome Diſputes in Law ariſing, there came a Writ to the Judges, *Quod ſi difficultas aliqua interſit*, the Record ſhould be tranſmitted to the Parliament; and the Parties were adjourned, *&c.* *

Now though the King's Writ was ſent in this Caſe, yet even that is a convincing Proof, that it was the Duty as well as Practice of that Age, for the Judges to adjourn Cauſes to Parliament, *ſi difficultas aliqua interſit.*

Anno 14 of the ſame King, Sir *John Staunton* and his Wife, having paſſed a Fine of certain Lands to *Thomas Granthorn*, who reverted them back, and by that means ſettled them upon the Wife; Sir *Jeffry Staunton* as next Heir brings his *Formedon en le deſcendre* in the *Common Pleas*, where (after ſome Proceedings) upon a Demurrer in Law, Sir *Jeffry* could not get the Judges to proceed to Judgment: Upon which he petitions the King in Parliament; they examine the Matter, and afterwards order a Writ under the Great Seal, containing the whole Matter, to be ſent to the Judges there, willing them thereby, if the Matter ſo ſtood, to proceed to Judgment without Delay. They not doing it, an *Alias* is ſent; and the Judges doing nothing then neither, and Sir *Jeffry* renewing his Petition; the Lords commanded the Clerk of the Parliament, Sir *Thomas de Drayton*, to go to Sir *John Stonore* and the reſt of the Judges of the *Common Pleas*, and to require them, according to the Plea pleaded, to proceed to Judgment, or elſe come into the Houſe with the whole Record, ſo as in Parliament Judgment might be given for one or other of the Parties.

Rot. Parliam. 14 Edw. III. *The grand Queſtion concerning the Judicature of the Houſe of Peers ſtated and argued*, p. 139: *writ by the late Lord* Hollis.

The Judges came at the Day, and the Buſineſs was heard; and it was adjudged that Sir *Jeffry* ſhould recover: and a Writ under the Great Seal was ſent to the Judges to give Judgment accordingly.

In the ſame Year, *viz.* 14 *Edw.* III. it was enacted, That by the Miſpriſion of a Clerk in any Place, whereſoever it be, no Proceſs ſhould be annulled or diſcontinued, by miſtaking in writing one Syllable or one Letter too much or too little; but as ſoon as the Thing is perceived by the Challenge of the Party, or in any other manner, it ſhall be haſtily amended in due Form, without giving Advantage to the Party that challengeth the ſame, by reaſon of ſuch Miſpriſion.

Stat. 14 Edw. III. *cap.* 6.

This Statute as it evinceth what the Authority of Parliament was in thoſe Days, ſo it proves that the Juriſdiction of *Weſtminſter* was not then ſo great, as in latter Times ſome have taken it to be.

Two remarkable Inſtances, amongſt ſeveral others, occur in our Books, of the Judges in *Weſtminſter Hall* ſuſpending their Judgment, in Caſes ariſing upon the Conſtructions of this Act, 'till they had conſulted with the Lords of Parliament.

Some Inſtances produced out of our Law Books, that the Judges of Weſtminſter Hall *ſuſpended giving their Opinions what the Senſe of an Act of Parliament was, 'till they had conſulted with the Lords of Parliament.*

* *Here we ſee a Continuance by a* Dies datus *to the Parties in Parliament.*

I. *John Martell* of *Sleford* brought a *Præcipe quod reddat*, in which Iſſue being joined, there was a Verdict for the Plaintiff.

The Year Book, Hill. 39 Edw. III. *fol.* 21. a.

Bealknap ſaid, the Writ was brought by *John Martell* of *Sleford*, and in the *Venire facias Sleford* is omitted: Wherefore he prayed, that the Court would not give Judgment upon that Verdict.

Thorp: This may be amended by the Statute; for heretofore we doubted by reaſon of ſome Diverſity in a Sur-name in a Writ: And the Writ was carried into Parliament; and the Lords who made the Statute, ſaid, That their Meaning was, that in all ſuch Caſes the Proceſs ſhould be amended.

The Year Book, Trin. 40 Edw. III. *fol.* 34.

II. In the 40th Year of the ſame King, a Writ of Cozenage was brought by *L. de M.* againſt *T. de B.* in which Proceſs was awarded 'till the Parties pleaded to Iſſue. Then the Defendant made Default, and a *Petit Cape* was awarded; at the Return whereof a Diſcontinuance of Proceſs was alledged; for that the Plaintiff by his Writ demandeth the Manor *Tybynribroke*, and in the *Habere facias viſum (broke)* was omitted.

Bealknap upon that Occaſion ſaid, The Statute of *ann.* 14 *Edw.* III. *cap.* 6. appoints, That if there be a Letter or a Syllable too much or too little in a Record, it may be amended; but where there is a Word wanting, the Statute makes no Proviſion.

Thorp ſaid, It had been formerly debated before them, Whether or no, if a Word were wanting in a Record, it might be amended; as when there wanted but a Letter or a Syllable; and that Sir *Hugh Green* and himſelf went together, * *A le coüncel*, to the Council, where were preſent at leaſt twenty four Biſhops and Earls, and enquired *de ceux qui fieront le Statute*, of thoſe who made the Statute, Whether a Record ought to be amended in ſuch a Caſe or not?

Theſe two Inſtances bring the Matter home: For we ſee that the Judges were guided by the Lords of Parliament, how they ought to expound an Act of Parliament; the true Senſe of which was either unknown, or much doubted of by thoſe Judges, who happily might have been Judges at the Time when the Act paſſed.

OBJECTION. But perhaps it may be objected, as to the laſt Caſe, That the Archbiſhop, who was then preſent in the Council, ſaid, *Que ceo eſtoit un nice demande & vain queſtion de eux*, Whether it might be amended or no: For he ſaid, it might be as well amended in this Caſe as if it were but a Letter: For if a Letter or Syllable was wanting in a

* Où eſt dit en 40 Edw. III. que les Juſtices alount all Councell, appier per 39 Edw. III. que ilz alount al Parlement à ſcaver l'opinion de ceux qui fieront la ley. *Coke*, lib. viii. fol. 158. *Blackmore's Caſe.*

Word

Word, it was no Word; whereby if the whole Word were wanting, it might be amended, as well as if it wanted but a Letter or a Syllable: For there was no more Difference in the one Caſe than in the other.

To this I anſwer, that the Strength of this Objection is a full Evidence to prove my Propoſition, that ſome modern Judges have enlarged and extended their Juriſdiction beyond the ancient, juſt, and legal Bounds of their Predeceſſors; who paid ſo profound a Submiſſion to the Judgment even of the * Privy Council. ANSWER.

For, as the Lord Chancellor *Elleſmere* ſays, oftentimes the reverend Judges had ſuch a grave Regard in their Proceeding, that before they would reſolve or give Judgment in new Caſes, they deſired to conſult with the King's Privy Council, as appeared in divers Caſes in King *Edward* the Third's time. *The Speech of the Lord Chancellor* Elleſmere *in the* Exchequer Chamber, *touching the* Poſt-nati, *p.* 50. *Judges conſulted with Privy Council.*

III. *R. W.* aſſaulted *Adam Brabſon*, in the Preſence of the Juſtices of Aſſize at *Wincheſter*, for which *A. B.* complained by Bill before the ſaid Juſtices, alledging his Offence to be in Deſpite of the King and his Juſtices, to his Damage of one hundred Pounds: *R. W.* pleaded *not guilty*, and was found *guilty*, Damages taxed to ten Pounds: Thereupon the Judges awarded him to Priſon in the Sheriff's keeping. *The Book of Aſſizes*, 39 Edw. III. placito.

And for the Fine, and that which ſhould be farther done for the King, for the Aſſault done in the Preſence of the Judges, they would have the Advice of the King's Council.*

IV. For in a like Caſe, becauſe *R. C.* did ſtrike a Juror at *Weſtminſter*, which paſſed in an Inqueſt againſt one of his Friends; it was adjudged by all the Council, That his Right Hand ſhould be cut off, and his Lands and Goods forfeited to the King. Theſe the Chancellor ſaid, were the Words in the Book. Mich. Term. 19 Edw. III. Fitzherbert's Abridgment, tit. Judgment, placito 174.

In this Caſe he noteth three Things:

1. The Judges conſulted with the Council.

2. They had a like Caſe before, when the Council was alſo conſulted with, *viz.* 19 *Edw.* III. And yet they would not proceed in this Caſe, before they had again conſulted with the Council.

3. That before *ann.* 19 *Edw.* III. there was no like Caſe or Precedent for ſuch a Judgment; and therefore the Judges would not themſelves pronounce that heavy Judgment before they had conferred with the Council touching the ſame: And after they had had the Opinion and Advice of the King's Council, they proceed to that Judgment. *Three Things noted by the Lord Chancellor* Elleſmere *from the foregoing Caſes.*

* *As is ſuppoſed by ſome.*

* *In the Book it is,* Ils voit aver adviſe de Counceil le Roy, *no mention being made of Privy.*

V. *Thomas*

The Year Book, Mich. Term, 39 Edw. III. *fol.* 35.

V. *Thomas Ughtred*, Knight, brought a *Formedon* againſt a poor Man and his Wife: They came and yielded to the Demandant, which ſeemed ſuſpicious to the Court; whereupon they examined the Matter, and ſtayed Judgment, becauſe it was *ſuſpicious* [*& vicious.*]

And *Thorp* ſaid, That in like Caſe of *Giles Blacket*, it was ſpoken of in Parliament, "And we were commanded, that when any like Caſe "ſhould come, we ſhould not go to Judgment without good Advice, "[*car il ſerroit malveys example.*] Wherefore ſue to the Council, and as "they will have us to do, we will, and otherwiſe not in this Caſe."

Notes upon the ſame Caſes.

Thus the Chancellor. And now give me leave to make my Notes upon what he hath told us.

Did the Judges before they would reſolve or give Judgment in new Caſes, oftentimes conſult with the King's Privy Council?

Let me then note,

1. Of how much greater Authority muſt it have been, for the Judges to have conſulted with the Publick Council of the Kingdom?

And did the Judges well know that a like Caſe had been adjudged before that, *viz.* That a Man's Right Hand ſhould be cut off for ſtriking in *Weſtminſter Hall:* And yet would they not, when a ſecond Caſe happened, pronounce that heavy Judgment, until they had firſt adviſed with the King's Council, and known their Opinion therein.

Then let me in the next Place note,

2. What the learned Judges of thoſe Times would have done, upon grave and ſerious Deliberation, if a Caſe had come before them, upon which had depended no leſs than the Weal and Safety of the whole Nation. How unfit and uncapable would they have adjudged themſelves to have been to reſolve and determine any ſuch great and concerning Caſe, before they had firſt received the Direction and Order of the High Court of Parliament therein for their Warrant?

Now if this be the true State of all theſe Tranſactions of the Judges of *Weſtminſter Hall*, as it is,

Let me laſtly note,

3. Whether it muſt not be a mere Mockery, for any indifferent Man to be told, that the Judges in thoſe Days did ever dream that they had any ſuch enormous Juriſdiction, or boundleſs Authority, as to declare Acts of Parliament to be void; which were the higheſt Security to *Engliſhmen* under Heaven; becauſe the King, Lords, and Commons, and in them the whole Kingdom, had conſented to the making thereof. Such a monſtrous Conceit was far from being paſſant, and in vogue for Law *in diebus illis.*

But more of this hereafter.

VI. In the 33d of *Henry* the Sixth, a Queſtion aroſe in the *Exche-quer Chamber*, before all the Judges of *England*, in a private Caſe, Whether a Bill certified before them as an Act of Parliament, were really an Act of Parliament, or no? The Difficulty conſiſted in this, that the Lords had made ſome Addition to the Bill after it came up from the Commons; and it did not appear, that it had been carried down to the Commons again, after ſuch Addition made by the Lords, to have the Commons Aſſent thereto. *The Year Book*, 33 Hen. VI. *fol.* 17, 18.

And upon a long and full Debate of the Matter, after *Kirkeby* of the *Rolls*, and *Faukes*, Clerk of the Parliament, had been examined about it, *Forteſcue*, who was then Chief Juſtice of the *King's Bench*, and who gave the Rule, ſaid, "This is an Act of Parliament, and we will be "well adviſed before we annul any Act done in the Parliament: And "peradventure the Matter ought to ſtay 'till the next Parliament; and "then we may be certified by them of the Certainty of the Mat-"ter; but notwithſtanding we will be adviſed, what we ought to "do, *&c.*" *

This was wholeſome Advice; and no doubt the Judges followed it.

But it may be objected, That this Caſe being concerning a Tranſ-action in the very Parliament, could not be well determined by the Judges, before they were informed by the Parliament itſelf, how the Matter of Fact truly ſtood; and that *Forteſcue* ſaid, *Peradventure le mater doit attendre juſques al prochein Parlement & adonques nous poiomus eſtre certifie par eux del certeintie del mater:* So that it ſeems *Forteſcue* ſays only *peradventure* the Matter ought to ſtay 'till the next Parliament. OBJECTION.

To this I anſwer, Let the whole Caſe be taken together, and let the Subject Matter be conſidered; and then I think it will appear, ANSWER.

1. That the Word *peradventure* was not ſpoke ſlightly, or at random; but in that Place had an emphatical Signification; as when a Man ſpeaking ſeriouſly and with Concernment, ſays to another, *Peradventure you had better have done this*; or, *Peradventure you had better not have done that.* Now that this muſt be the Senſe of that Word, ſeems to me to be clear.

2. By the Caſe itſelf it evidently appears, that the Judges never gave Judgment at all in it. And,

3. From the Context, "We will be well adviſed before we annul "any Act done in the Parliament; *Peradventure* the Matter ought to

* *Forteſcue*, c'eſt un act de Parlement, & nous voilloums eſtre bien aviſe devant que nous ad-nullaums aſcun act faite en le Parlement; & *peradventure* le mater doit attendre juſques al prochein Parlement, & adonques nous poiomus eſtre certifie per eux del certeinte del mater, mes non obſtaunt nous voilloums eſtre aviſe que ſerra fait, *&c.*

"ſtay 'till the next Parliament;" It is plain, that Matters of Difficulty in Point of Fact, which concerned the Parliament itſelf, were not to be decided in *Weſtminſter Hall*, but to be adjourned by the Judges in the King's High Court of Parliament, ſo as to keep themſelves within the Circle of their ſage Predeceſſors.

Stat. 27 Eliz. cap. 8. videſis Stat. 31. Eliz. cap. 1.

The Statute of the 27th of Queen *Elizabeth* cannot be underſtood to have changed or altered this ancient Courſe and Practice of Law in Adjournments to be made to Parliaments, *propter difficultatem*.

Becauſe, in the very Act there is a Clauſe added, that no Reverſal or Affirmation in the *Exchequer Chamber* ſhall be ſo final, but that the Party aggrieved may ſue in Parliament for a further Examination of the Judgment.

And that Statute gives a Writ of Error before the Judges of the *Common Pleas*, and the Barons only in ſeven Actions there enumerated.

But the principal Reaſon of the making of the Act is thus given; becauſe the High Court of Parliament was not in thoſe Days ſo often holden, as in ancient Time it had been.

Adjournments out of the Exchequer Chamber, *and other inferior Courts into Parliament, frequent in old Times.*

Beſides as Adjournments into the *Exchequer Chamber* for Advice of all the Judges, were frequent in old Times; ſo we ſee from the before-mentioned Caſe in 33 *Henry* VI. which was alſo in the *Exchequer Chamber*, it was adviſeable to adjourn it from thence into Parliament.

Coke's 2d Inſt. *fol.* 408.

In a Word, the Lord Chief Juſtice *Coke* tells us, That Matters of great Difficulty were of ancient Times uſually adjourned into Parliament, to be reſolved and decided there; and that there are infinite Precedents thereof in the Rolls of Parliament.

But beſides all this, there was another Way to determine Difficulties in Point of Law, which ſhould ariſe in *Weſtminſter Hall*.

Pulton's Stat. 14 Edw. III. *cap.* 5.

The Statute of 14 *Edward* III. recites, that diverſe Miſchiefs had happened, for that in the *Chancery*, *King's Bench*, *Common Bench*, and *Exchequer*, &c. Judgments have been delayed, ſometimes for Difficulty, and ſometimes for diverſe Opinions of the Judges, and ſometimes for other Cauſe; for which Reaſon it was enacted, That at every Parliament there ſhould be choſen a Prelate, two Earls, and two Barons, who were to be commiſſioned to hear, by Petition, ſuch Complaints of ſuch Delays and Grievances, and to cauſe to come before them the Judges, and the Tenor of the Records, and Proceſſes of Judgments ſo delayed; and by Advice of the Chancellor, Treaſurer, and the Juſtices of both Benches, and as many of the King's Counſel as they ſhould think fit, to direct what Judgment the Court ſhould give.

But was this all? No, there is a memorable Clauſe in the Statute, which follows in theſe very Words, *viz.*

"And

"And in caſe it ſeemeth to them that the Difficulty be ſo great, "that it may not well be determined without Aſſent of the Parlia- "ment, that the ſaid Tenor, or Tenors, ſhould be brought by the "ſaid Prelate, Earls, and Barons, unto the next Parliament, and "there a final Accord ſhould be taken, what Judgment ought to be "given in the Caſe."

From whence we may obſerve: OBSERVATIONS.

I. That the Statute was made to eaſe the Parliament of Complaints touching Delays, by reaſon of Difficulty, and the diverſe Opinions which had happened amongſt the Judges in *Weſtminſter Hall*.

II. That the Parliament of the 14th of *Edward* III. very well knew, and wiſely foreſaw, that ſeveral Difficulties in Points of Law might ariſe, too great to be determined, even by five Peers, though aſſiſted by the Chancellor, the Treaſurer, the Judges, and as many of the King's Counſel as they ſhould pleaſe to call to them; and therefore the Parliament reſerved the Determination of ſuch Difficulties to themſelves, leſt the Judges ſhould make Inroads upon the Law, by their Opinions.

I cannot now tell, how well the Statute was executed in every Parliament in the long Reign of *Edward* III. No doubt many Examples may be found in the Execution thereof.

And this is certain, that in 9 *Richard* II. there was a Commiſſion granted, wherein this Statute of the 14th of *Edward* III. is recited at large, the Commiſſion was made to thirteen Commiſſioners *de audiendo querelam Thomæ Lovel de aſſenſu Parliamenti*, commanding the Chancellor, the Treaſurer, the Juſtices, and others of the King's Counſel, to attend and aſſiſt the ſaid Commiſſioners. Rot. Pat. 9 R. II. pars 3. N°. 31. dorſo De audiendo querelam Thomæ Lovel, de aſſenſu Parliamenti.

Now the true Reaſon of all that hath been ſaid, is well delivered to us by theſe following Authorities.

I. The Lord Chief Juſtice *Popham*, in his Argument touching the Union of both Kingdoms in King *James* the Firſt's Time, cited a Reſolution in Parliament, when himſelf ſerved as Speaker, that whereas it was propoſed to have a Law made that the Judges might uſe their Diſcretion in appointing Tryals in foreign Countries, in reſpect the meaner Sort of People were outweighed with the Power of great Men, in ſome Shires that were Parties to the Suits, it was upon grave Advice and Conſultation denied, with this Anſwer; That it was better to live under a certain known Law, though hard ſometimes in a few Caſes, than to be ſubject to the alterable Diſcretion of any Judges. Moor, p. 798.

II. Judge

Crook Eliz. *fol.* 567, 568.

II. Judge *Gawdy*, in a Caſe betwixt *Williams* and *Williams*, *Trin.* 39 *Elizabeth*, has theſe Words; "Altho' it were a greater Miſchief, "yet it is to be ſuffered, rather than have the Law to be changed, "unleſs it be by Parliament."

Popham's Reports, *fol.* 79.

III. The Lord Chief Juſtice *Popham*, in *Dillon* and *Frame*'s Caſe, ſays thus; "How preciſe ſoever the Letter is againſt the Execution "of theſe contingent Uſes, the Intent thereof is yet more ſtrong and "preciſe againſt them, which I will prove clearly by the Statute it-"ſelf, which is of greater Authority than the particular Opinion or "Conceit of any Judge whomever; for it is the Judgment of all the "Judges, and all the Realm alſo, which ought to bind all, and to "which all ought to give Credit."

Moor, *p.* 828.

The great Abſurdity of the late Notion, that the Judges had a Power to declare Acts of Parliament void.

Moreover, the Lord Chancellor *Egerton*, in his Speech to Sir *Henry Montague*, cenſures ſome former Judge or Judges, for challenging a Power to the Judges of the Court of *King's Bench*, to correct all Miſdemeanours, as well extrajudicial as judicial, and to judge Statutes and Acts of Parliament to be void, if they conceived them to be againſt common Right and Reaſon; whereas (he ſaith) they ought to have left it to the King, and to the Parliament, to judge what was common Right and Reaſon.

Hilary Term, 21 Hen. VII. *fol.* 2.

And if it ſhould be otherwiſe, it would be the greateſt Abſurdity in the World: For, as the Year Book of *Henry* VII. ſaith, "An Act of "Parliament is one of the higheſt Records that is in the Law, and "ſuch a Record, to which every one in *England* is privy, and ſhall "be bound by it."

Finch's Nomotechnia, *lib.* 2. *cap.* 1. *fol.* 21. b. 23 Eliz. *Dyer.* 375. 1 H. VII. 19. b. 37. Aſſ Pl. 17.

For the Parliament, as Serjeant *Finch* proves, has abſolute Power in all Caſes, both to make Laws, and judiciouſly to determine Matters in Law, to try Men for their Lives, to reverſe Errors in the Court of *King's Bench*, eſpecially where there appears to be any common Miſchief, which cannot be redreſs'd by the ordinary Courſe of Law: In ſuch Caſes, the Parliament is the proper Court. And whatſoever they do, is in the Nature of a Judgment. And if the Parliament itſelf err, which may happen, ſuch Error can be revers'd no where but in Parliament.

21 Edw. III. 46. Brook Parl. 16.

And there the Judges have no Voice, but are only Aſſiſtants, and under the Rule and Command of the Lords.

Juſtices of Peace Expounders of Statutes as well as the Judges.

Dalton's Juſtice, *cap.* 5. *fol.* 17.

It muſt be admitted, that the Judges are Expounders of Statutes, and ſo are the Juſtices of Peace in a County Seſſions; in whoſe Commiſſion, as Mr. Juſtice *Dalton* informs us, there is this particular Clauſe inſerted, *viz.* "That if any Caſe of Difficulty ariſe before them, "in Matters within their Commiſſion, that then they ſhall not pro-"ceed to Judgment, but in the Preſence of one of the Juſtices of either "Bench, or of a Judge of Aſſize."

Which Direction to Judicatures, inferior to thoſe at *Weſtminſter*, ſeems to have taken its Pattern from the profound Reſpect and Submiſſion which the Courts of *Weſtminſter Hall* in all former Times paid, and ought by the ancient Law of the Realm ſtill to pay to their ſuperior Court, *viz.* the Parliament, which is the ſupremeſt Judicature in the Realm, and to which the Judges are accountable for all their Judgments, which are there upon Occaſion to be reviſed, diſcuſſed, and finally decided.

It may be ſaid, That every Precedent ought to have a Commencement. Coke, 12 Report 74, 75.

But it muſt be anſwered, True it is, that every Precedent hath a Commencement; but when Authority and Precedent are wanting, there is need of great Conſideration, before that any thing of Novelty ſhall be eſtabliſhed, to provide that ſuch new Precedents be not againſt the Law of the Land. *Judges ought to be very careful how they preſume to make new Precedents, for fear they ſhould be afterwards found to contradict the Law of the Land.*

Yet it cannot be proved by any Hiſtory, or Record, that the Law of the Land did ever warrant either the Judges of the *King's Bench*, *Common Pleas*, or Barons of the *Exchequer*, or All Twelve of them in Conjunction, though headed with the Lord Keeper or Lord Chancellor, to frame and make any new Precedents, in ſuch Matters as concerned the fundamental Conſtitution of the *Engliſh* Government, and the general State of the whole Kingdom.

Had there ever been any ſuch Law; then,

1. Such an immenſe Juriſdiction in the Hands of Twelve *Durante bene placito* Judges, would have long ago aſſumed all Things to itſelf, outfacing and trampling down all oppoſite Claims of Right and Property. *The dangerous Conſequences that would have inevitably happened to the whole Kingdom, if the Judges of* Weſtminſter Hall *had ever had ſuch an extravagant Power as to make new Precedents in Matters concerning the fundamental Conſtitution of our* Engliſh *Government, expoſed.*

2. It would have been perpetually forging new Prerogatives, and interpreting every thing ſo as the Judges conceived would beſt defend and maintain them; nor would it have contented itſelf without being always on the March forwards, alledging and urging one Encroachment to authorize and juſtify another.

3. Lawyers would have been extremely enamoured with, and very ambitious of the High Dignity and Honour of a Judge; and all the Chicanneries imaginable would have been made uſe of, to obtain that Name.

4. What Flattery and Sycophantry, what Crouching and Fawning, what earneſt and continual Applications, what Striving and Struggling would there not have been, to clamber one above another, in order to mount themſelves up to ſo lofty a Seat of Authority as the Place of a Judge? Beſides,

5. As a natural Reſult of ſuch a chimerical Pretence, there never would have wanted Legions of mercenary Tongues to ſpeak, and ſtipendiary Pens to write in Defence of its Practices; nor

ſhould any Man, without running the Hazard of being utterly ruined for a defamatory Libeller againſt the Government, have dared to ſay, That the Deciſions of the Judges were exorbitant and illegal.

6. In fine, Had there ever been ſuch an extravagant Juriſdiction, it muſt neceſſarily (if not with-held by continual Miracles) have thrown both Church and State into endleſs Miſchief, becauſe it would naturally have become abſolute and unlimited.

The Judges of Weſtminſter Hall *never inveſted with any ſuch Power.*

But that the Twelve Judges in *Weſtminſter Hall* were ever inveſted with any ſuch Power, I poſitively deny; and for a full and clear Proof that I am in the right, let the Reader well conſider the following Authority:

Foulton's Statutes, 12 E. II.

" Foraſmuch as divers People of the Realm of *England* and *Ireland*, " have heretofore many times ſuffered great Miſchiefs, Damage, and " Diſſenſions;

" 1. By reaſon that in ſome Caſes, where the Law failed, no Re- " medy was ordained;

" 2. And alſo, foraſmuch as ſome Points of the Statutes heretofore " made, had need of Expoſition:

" Our Lord King *Edward*, Son to King *Edward*, deſiring that full " Right be done to his People, at his Parliament holden at *York*, in " the third Week after the Feaſt of St. *Michael*, the 12th Year of his " Reign; by the Aſſent,

" 1. Of the Prelates, Earls, Barons,

" 2. And the Commonalty of his Realm,

" there aſſembled, hath made theſe Acts and Statutes here following: " The which he willeth to be ſtraightly obſerved in his ſaid Realm " and Land."

Thus far the Preamble of that Statute: From whence we may learn,

1. That in ſuch Caſes of Difficulty, where there were no direct Law, nor Example, or Precedent:

2. Or where new Caſes happened, upon Statutes which needed Expoſition:

The true and certain Rule in thoſe Times was, to have them provided for, and determined, not by the Judges of *Weſtminſter Hall*, but in Parliament.

The Concluſion of the Chapter.

To conclude this Chapter, and to ſum up the Reaſons of the whole in ſhort, I will give the Reader ſome part of a moſt excellent Speech which King *James* I. made to both Houſes of Parliament, in the fifth Year of his Reign. His Words are theſe:

" Where

"Where there is Variety and Uncertainty in Caſes of Law; although "a juſt Judge may do rightly, yet an ill Judge may take Advantage to "do wrong; and then are all honeſt Men, that ſucceed him, tied in a "manner to his unjuſt and partial Concluſions.

"Wherefore leave not the Law to the Pleaſure of the Judge; "But let your Laws be looked into: For I deſire not the aboliſhing of "the Laws, but only the clearing and ſweeping off the Ruſt of them; "and that by Parliament our Laws might be cleared, and made known "to all the Subjects.

"Yea rather it were leſs Hurt, that all the approved Caſes were "ſet down, and allowed by Parliament, for ſtanding Laws in all "Time to come."

K James I. *his Speech to both Houſes of Parliament, delivered in the Great Chamber at* Whitehall, *the laſt Day of* March, 1607. *His Works*, fol. 509, 512.

CHAP.

CHAP. III.

Several Precedents produced to prove, that an Award in Parliament was of ſo high a Regard in the Law, that it could not be changed, or altered, by any Interpretation of the Judges in Weſtminſter Hall; *and that becauſe it was an Award in Parliament.*

THE Reader will perhaps expect, as preliminary to the PRECEDENTS hereafter made uſe of, that I ſhould inform him, what an Award in Parliament anciently was; which I take to have been this: *viz.*

What was anciently an Award in Parliament.

A final Reſolution of particular original Caſes, brought and given in full Parliament, upon publick Conference and ſolemn Debate; and not upon a Writ of Error before the Lords.

And having ſaid this, I ſhall now produce my Precedents.

The Firſt PRECEDENT.

Rot. Parliam. 8 Edw. II. Petitio Comitis Athol. N° 34.

In the 8th Year of King *Edward* II. the Earl of *Athol* petitioned the King and his Council for his Inheritance, which had been given away during the Ordinances (made *anno quinto* of that King,) and contrary thereunto; and prayed, that the ſaid Gift might be repealed, and his Inheritance reſtored; foraſmuch as he had loſt all his Lands in *Scotland*, for taking part with the King.

Which Petition by the King's Commandment was read, *en plein Parlement devant*

1. *Prelates, Countes, Barons,*
2. *Et touts auters.*

Where the Petition was anſwered,

Per Aſſent & Acord de touz;

That the ſaid Earl had formerly forfeited his Inheritance to the King, and therefore could not demand it again, as his Inheritance; and that the King had given him other Lands to the Value thereof, becauſe

becauſe he could not reſtore the Earl to the Land itſelf, which he claimed as his Inheritance.

After all which the King commanded the Earl's Petition, with the Anſwer, to be enrolled in *Chancery* and both Benches.

The Second PRECEDENT.

In the 12th Year of King *Edward* II. *Hugh de Audeley* the younger, and *Margaret* his Wife, preferred their Petition in the Parliament held at *York*, three Weeks after *Michaelmas*, directed, *A noſtre Seigniour le Roy, & ſon Councel, Prelates, Countes, & Barons de ſa terre*, praying, Rot. clauſ. 12 Edw. II. m. 5. dorſo.

Whereas the King by his Charter long before the Ordinances made (5 *Edw.* II.) by Aſſent of his Council had given and granted to Monſieur *Piers de Gaveſton*, and the ſaid *Margaret* his then Wife, the County of *Cornwall*, and all the Lands and Tenements that had belonged to *Edmond* late Earl of *Cornwall* at the Day of his Death, to hold to them and the Heirs of their two Bodies begotten; whereof they were ſeized by Virtue of the ſaid Gift, long time before the ſaid Ordinances; and had Iſſue, which ſurvived the ſaid Earl. And whereas alſo the King had reſeized the ſaid County, and other the Lands and Tenements ſo given, into his own Hands; That he and his Council would be pleaſed to reſtore to the ſaid *Hugh* and *Margaret* the ſaid County and the ſaid Lands, as the Right of the ſaid *Margaret*, to hold in Manner aforeſaid; having Regard to the Grand Charter, which wills, That a Widow, after the Death of her Huſband ſhall incontinently have her Inheritance and her Marriage; and that Right ſhall not be delayed; and that none ſhall be ouſted of his Frank-tenements, without Award and Judgment of the Law of the Land: And alſo having Regard to the Statute of *Weſtminſter* the Second, which wills, That Lands given in Tail, ſhall remain to them to whom they are given, and to their Heirs, according to the Will of the Donor; and to theſe Statutes, which will, That the great Charter, and other Statutes theretofore ordained, ſhould be held in all Points. Magna Charta. cap. 8. cap. 29. Stat. Weſtm. ii. cap. 1.

Hitherto the Petition.

Then the Record proceeds thus:

Poſtea in Parliamento ejuſdem domini Regis, tento apud Eborum a die Paſchæ in unum menſem anno ſupradicto; The ſaid Petition having been fully debated *in pleno Parliamento:* And foraſmuch as *recordatum fuit*,

1. *Tam per Prælatos, quam per Comites, Barones,*
2. *Et totam Communitatem Regni*;

That formerly it had been agreed, ordained and reſolved, as well by the aforeſaid Prelates, Earls and Barons, as by the whole Commonalty of the ſaid Kingdom, That all the Grants and Gifts made by the King

to the ſaid *Peter* and *Margaret* of the aforeſaid County, and other Caſtles, Manors, Lands and Tenements whatſoever, had been revoked and made void, as to the ſaid *Peter* and the ſaid *Margaret* and their Iſſue: Therefore, *in hoc Parliamento*,

1. *Per Prælatos, Comites, & Barones,*

2. *Et totam Communitatem Regni, concordatum eſt & conſideratum,*

I. That the ſaid County, and all other the ſaid Caſtles, Manors, Lands and Tenements whatſoever, with their Appurtenances, ſhould remain entirely to the King, quit from the ſaid *Hugh* and *Margaret*, and the Iſſue of the ſaid *Peter* and *Margaret*, for ever.

II. That the Charters and Eſcripts, made by the King in what Manner ſoever, ſhould be brought into Chancery, and there cancelled: And the Enrollments thereof, in that Court, ſhould be caſſated and annulled.

III. And that That Award, or Judgment, ſhould be entered in the *Rolls* of Parliament, and in the *Chancery*; and ſhould be ſent from thence into the *Exchequer*, and both Benches, to be there enrolled *in memoriam perpetuam.*

Purſuant to which, Writs were ſent to the Judges of the ſeveral Courts, commanding them to enroll the ſame accordingly, with this following Clauſe:

Et, quantum in vobis eſt, teneri & adimpleri faciatis juxta tenorem reſponſionis ſupradictæ, & hoc nullatenus omittatis, &c.

Now whoſoever looks into the Nature of this *Precedent*, and will ſeriouſly examine the Circumſtances thereof, muſt confeſs, That it is very incongruous and abſurd to ſuppoſe, that the Judges in *Weſtminſter Hall* durſt preſume, after the Diſſolution of Parliament, to change or alter any thing in this Award, by their Interpretations.

The Third PRECEDENT.

Petit. Parliam. 1 Edw. III. pro Eliz. de Burgo.

In the Parliament held 1 *Edw.* III. *Elizabeth de Burgo* petitioned the King and his Council, ſetting forth, That *Edw.* II. in the 16th Year of his Reign, commanded her by Writ to come to him to *York* at *Chriſtmas*; where (by the Conſpiracy and ſubtle Contrivance of *Hugh Spencer* the younger, *Robert de Baldock*, afterwards Chancellor, and *William de Cliffe*,) they had cauſed her to be arreſted, and become bound to him, that ſhe would not receive any that were Contrariants to him, nor marry herſelf, nor convey her Lands to any without his eſpecial Licence; and if ſhe ſhould fail in any of the Premiſſes, That

then her Lands and Tenements, Goods and Chattels, ſhould be forfeited to the ſaid King.

Whereupon ſhe prayed, That the ſaid Obligation might be vacated, and re-delivered to her.

Upon which Petition King *Edward* III. ſent his Writ to *Richard de Armyn*, Clerk of the Privy Seal, to bring the Bond before the King, and his Council in that Parliament; which he did.

And, the Bond being afterwards brought *en plein Parlement*, the Record ſays:

Pur ce que avys eſt par

1. *Erceveſque, Eveſque, Countes, & Barons,*
2. *Et auters Grandees, & tout le Comminaltie*;

That the ſaid Bond was made contrary to Law, and againſt all manner of Reaſon. The ſaid Bond was,

Per Agard del Parlement,

illonques damne; and ſo was delivered to the ſaid *Elizabeth.*

The Fourth PRECEDENT.

In a Parliament likewiſe held the 1ſt of *Edward* III. the Archbiſhop of *York* petitioned againſt *Richard de la Pole*, then the King's Butler, ſuggeſting in his Petition, That *Athelſtan*, formerly King of *England*, had by his Charter granted to the then Archbiſhop of *York* and his Succeſſors, all Liberties in the River of *Hull*, that Heart could think, or Eye could ſee: And that afterwards King *Henry* III. had by his Charter granted to *Walter Giffard* then Archbiſhop of *York* aforeſaid, that himſelf and his Succeſſors ſhould hold and enjoy his Port and Prizes, as well of Wines as of other Merchandizes there arriving, in like manner as *Walter Gray*, and other the Predeceſſors of the ſaid *Walter Giffard* had held the ſame.

Placita coram domino Rege apud Ebor. de Term. S. Trin. ann. reg. regis Edw. III. poſt conqueſtum primo.

And avers, That from the Time of King *Athelſtan*'s Grant, 'till the Confirmation thereof by King *Henry* III. the Archbiſhop's Predeceſſors had taken and enjoyed the Prizes of Wines in the River of *Hull*, in like manner, as the King's Progenitors had taken and enjoyed the ſame in other Parts of the Kingdom; and from the Time of the ſaid Confirmation 'till ſuch Time as *Matthew Columbers*, late Butler to King *Edward* I. obſtructed the then Archbiſhop to take and enjoy the ſame:

And that the Archbiſhop and his Predeceſſors had from that Time been frequently hindered by the King's Butlers to take the Prices aforeſaid.

Upon which Petition the King directed his Writ to *Richard de la Pole* his Butler, reciting an Inquiſition, which had been taken in the Reign of King *Edward* II. and returned into Chancery, which had

alſo

alſo been produced before himſelf and his Council, whereby the Matter of Fact had been found for the Right of the Archbiſhop.

And reciting alſo, That one *Benedict Fulſham*, and others, late Butlers to the ſaid King *Edward* II. being perſonally preſent before the King and his Council in Parliament, would ſay nothing to the contrary, but that they found the King ſeized of the ſaid Prizes, when they entered upon their Offices.

And reciting farther, That the Treaſurer and Barons of the *Exchequer* had certified the King and his Council, that they did not find that the King's Progenitors had been ſeized of the ſaid Prizes in the River of *Hull*, before the making of the ſaid Charter of King *Henry* III.

And therefore it was commanded him the ſaid *Richard*, to permit the Archbiſhop to take his Prizes, or perſonally to appear in the Court of *King's-Bench*, to ſhew Cauſe, *Quare mandatis Regis toties ipſi directis parere contempſerit.*

At which Day the ſaid *Richard de la Pole* appeared, and the Archbiſhop likewiſe; and the ſaid *Richard* was required to anſwer the King for his Contempt, in not obeying the King's Writ; who offering to prove, that the King had a Right to the ſaid Prizes, and not the Archbiſhop;

The Archbiſhop inſiſted, That the ſaid *Richard* had Day given him only to anſwer his Contempt, and for no other Cauſe; and that foraſmuch, as *prædicta conſideratio* was made in ſo ſolemn a Place as in Parliament;

1. *Per ipſum Regem,*
2. *Prælatos, Comites, Barones,*
3. *Et Communitatem Regni in eodem Parliamento convocatos;*

A qua conſideratione the aforeſaid Writ iſſued to the ſaid Butler as the King's Servant, to execute the ſame;

And that *prædicta conſideratio* could not be revoked, *alibi quam in Parliamento*; nor the King's Right to the ſaid Prizes, if he had any, be determined in that Court upon that Writ; nor that the Archbiſhop ought to anſwer the King thereupon; 'till he were put into Poſſeſſion of the ſaid Prizes, *prætextu conſiderationis prædictæ:* He therefore prayed, That the ſaid Butler might be commanded, as before, to let him take the ſame Prizes, and that he be puniſhed for his Contempt, *&c.*

Quod amoveat manus dom. Reg. ab hujuſmodi priſis, &c.

Whereupon a farther Day being given, the King in the mean time directed his Writ to the Juſtices under the Privy Seal, commanding them, if they conceived any Doubt in the Matter, to diſcloſe the ſame before him and his Council; that he might be informed of his Right, before a final Determination were made.

In Obedience to this Writ, the Record and Proceſs of and in the ſaid Cauſe were carried to the King, *quia videbatur Juſticiariis hic fore dubium*

dubium in curia iſta ulterius procedere in negotio prædicto; who delivered them to the Chancellor, and commanded him to aſſemble all the King's Council in *Chancery*, that Juſtice might there be done.

Et poſtea coram ipſo Cancellario & Theſaur. Juſticiariis & aliis de Concilio in Cancellaria convocatis, tam Archiep. quam prædictus Richardus de la Pole, &c.

Afterwards, as well the Archbiſhop as the ſaid *Richard*, appeared before the Chancellor, the Treaſurer, the Juſtices, and others of the King's Council in *Chancery*; where the ſaid *Richard* ſaid, as before, That the ſaid Archbiſhop had no Right to the ſaid Prizes; but that they belonged to the King in Right of his Crown, as he offered to prove by divers Reaſons and Evidences; as alſo that there were divers Errors in the ſaid Record and Proceſs in Parliament, as he then offered to prove.

But the Archbiſhop ſaid, as before, that the ſaid *Richard* had Day given him to anſwer for his Contempt only; and not to defend the King's Right, nor to aſſign Errors in the Proceedings of the Parliament: And that he the Archbiſhop ought not to anſwer thereupon, 'till he were put in Poſſeſſion of the ſaid Prizes, *virtute conſiderationis prædictæ in prædicto Parliamento factæ*; which Conſideration could be revoked no where but in Parliament: In which Conſideration alſo the King's Right was ſaved; but that it could not be determined upon that Writ directed to the Butler. Wherefore he again prayed to be reſtored to his Poſſeſſion, and that the Butler might be puniſhed; and ſaid he was ready to anſwer the King when and where.

After which follows the Opinions of the Chancellor, Treaſurer, the Juſtices, and others of the King's Council, *viz.*

That foraſmuch as the aforeſaid *Conſideration* was made in Parliament, purſuant to which the ſaid Writ had iſſued forth to the ſaid Butler; by which Writ the ſaid Butler had Day given to anſwer the King only for his Contempt: And foraſmuch alſo, that as well in the ſaid Conſideration, as in the ſaid Writ, the King's Right is ſaved, which could not be determined in that Court upon that Writ; and becauſe it is unreaſonable that the ſaid Archbiſhop ſhould anſwer the King concerning his Right to the Premiſſes, 'till ſuch Time as he had been put into Poſſeſſion of the ſaid Prizes as had been conſidered in Parliament: The whole Council was of Opinion, That the Execution of the ſaid Conſideration in Parliament ought not to be ſuperſeded; and that the Archbiſhop ſhould have a Writ to put him into Poſſeſſion.

I ſhall make but one ſingle Remark upon this Precedent.

The REMARK.

A Remark upon the foregoing Precedent.

The King, we ſee, referred the Conſideration of this Caſe, *Cancellario, & Theſaurario, Juſticiariis & aliis de Concilio.*

Now here will ariſe a great Queſtion, *viz.* Who thoſe *alii de Concilio* were, who were to be Co-aſſeſſors with the Chancellor, Treaſurer, and Juſtices in this Caſe?

This, indeed, is a material Queſtion, and very fit to be reſolved.

Coke's 1ſt Inſt. *l.* 2. *fol.* 110. a.

The King of *England*, ſays the Lord *Coke*, is armed with diverſe Councils;

The Law of England *hath armed the King with ſeveral Councils to aſſiſt him in the juſt and legal Adminiſtration of his Government.*

1. One whereof is called *Commune Concilium*, and is the Court of Parliament, and ſo it is legally called in Writs, and judicial Proceedings, *Commune Concilium Regni Angliæ.*

2. And another is called *Magnum Concilium*; this is ſometimes applied to the Upper Houſe of Parliament, and ſometimes, out of Parliament Time, to the Peers of the Realm, Lords of Parliament, who are called *Magnum Concilium Regis*; for the Proof whereof, take one Record for many in the 5th Year of King *Henry* IV. at which Time there was an Exchange between the King and the Earl of *Northumberland*, whereby the King promiſeth to deliver to the Earl, Lands to the Value of, *&c. per advice & aſſent des Eſtates de ſon Realme & de ſon Parlement (parenſi que Parlement ſoit devant le Feaſt de St. Lucy) ou auterment per advice de ſon grand Council & auters Eſtates de ſon Realme que le Roy ferra aſſembler devant le dit Feaſt in caſe que le Parlement ne ſoit.* And that herewith agreeth the Act of Parliament in 37 *Edward* III. *cap.* 18. where it is ſaid, *before the Chancellor, Treaſurer, and the great Council.*

3. (As every Man knoweth) the King hath a Privy Council for Matters of State; (as for Example) *Henricus de bello Monte, baro de magno & privato Concilio Regis juratus*; and many others before and after.

4. The fourth Council of the King are his Judges of the Law, for Law Matters, and this appeareth (he ſaith) frequently in our Books, and muſt be intended when it is ſpoken generally by the Council, it is to be underſtood *ſecundum ſubjectam materiam*, for Example, if it be legal, then by the King's Council of the Law, *viz.* the Judges.

But under the good Favour of ſo eminent a Judge, the Reader ought to be truly informed, that in the Reigns of *Edward* I. *Edward* II. and *Edward* III. and later Times, the King's learned Council conſiſted of all theſe, *viz.*

The conſtituent Members of the King's learned Council in former Ages.

1. The Chancellor, the Maſter of the *Rolls*, and Maſters in *Chancery*.

2. The Juſtices of the *King's Bench.*

3. The Juſtices of the *Common Pleas.*

4. The Treaſurer, Chancellor, Barons and Chamberlains of the *Exchequer.*

5. The Secretaries of State, Clerk of the Privy Seal, and Clerk of the Wardrobe.

6. The Juſtices in Eyre, Juſtices aſſign'd, Juſtices in *Wales*, and the King's Serjeant at Law.

7. And

7. And likewiſe other Perſons, whom the King thought fit to call, and adviſe with.

As appears by ancient Rolls, and other Records.

Theſe were the King's Council, ſo often mentioned in Petitions and Acts of Parliament, and not that which we now call the Privy Council.

So that by a Deduction from theſe Particulars, we may learn, that the Juſtices in *Weſtminſter Hall* were but a Part of that Council, and, being compared with the Whole, were the leaſt Part thereof; and therefore,

Diſtinguenda ſunt Tempora.

There was anciently a vaſt Difference between the Reſolutions of all the King's Council at Law, and the Opinions of the Twelve Judges in Weſtminſter Hall.

From hence it is unqueſtionably evident, that there muſt be a vaſt Difference, and a plain Diſtinction, between the Authority of the ſolemn Reſolution of that Council, and the Opinions of the Twelve Judges, conſidered either

1. Jointly and extrajudicially, as the King's Council in Matters of Law, according to the modern Notion; or,

2. Severally and judiciouſly, in their reſpective Courts in *Weſtminſter Hall.*

But to ſpeak diſtinctly and fully of the conſtituent Parts, and ancient Authority of thoſe different Councils, cannot here be properly done, but will require a particular Tract hereafter by itſelf. And therefore I ſhall now return to my former Subject, *viz.* an Award in Parliament, and proceed to

The Fifth PRECEDENT.

Placita Parl. *fol.* 636. Wherndale *Tenants.*

In a Parliament held in the 2d Year of *Edward* III. *Robert de Iſdle*, and the Tenants and Men of *Wherndale*, petitioned the King and his Council; ſetting forth, That whereas by Petition, which they ſued at the laſt Parliament at *Weſtminſter*, a Tranſcript whereof was affixed to their Petition, they ſhewed to the King and his Council, that King *John*, who was Lord of the Manor and Foreſt of *Knareſborough*, had brought within the Foreſt the Country of *Wherndale*, which adjoined to the ſaid Foreſt of *Knareſborough*, which Country never was, nor is, of the Fee, nor of the Seigniory of *Knareſborough*, nor had ever before been in Foreſt or Free Chace, and had charged the ſaid Country *de Paſture de Foreſters*, and with diverſe other Cuſtoms of the Foreſt.

And that afterwards, at the Suite of the Tenants, and Men of the Country of *Wherndale*, the ſaid King *John*, upon better Advice, diſafforreſted the ſaid Country by his Charter, the Tranſcript whereof was alſo affixed to their Petition, whereby the ſaid Country of *Wherndale* continued diſcharged, till the Time of one *William de Ireby*, Steward of *Richard* Earl of *Cornwall*, then Lord of the Manor and

Foreſt of *Knareſborough* aforeſaid; who by Extortion and Diſtreſs, of his own Wrong, charged the ſaid Country of *Wherndale de Paſture de Foreſters*, and other Charges and Cuſtoms, contrary to the Tenor of the Charter aforeſaid. And they further ſet out, That afterwards the Officers of the then King, charged the ſaid Country as aforeſaid, and notwithſtanding that the Petition of the ſaid *Robert*, and the Tenants and Men aforeſaid, which they ſued to the laſt Parliament at *Weſtminſter* was anſwered, and the ſaid Charter there inſpected and allowed, *per que agard feuſt*, that they ſhould remain quit of any Charge, and that they ſhould not be grieved contrary to the Tenor of the Charter; and the King's Officers aforeſaid were commanded by Writ to forbear grieving them; and afterwards by other Writs, the Officers of Dame *Iſabell*, Queen of *England*, (in whoſe Hands the Manor and Foreſt of *Knareſborough* then was,) to ſurceaſe the ſaid Grievances, for which Commandment they would not forbear, but grieved them as far as they could.

Wherefore the ſaid *Robert*, and Tenants and Men of *Wherndale* prayed,

Que ceo eſt que autrefoitz lour feuſt agard & juge en Parlement qu'eſt le plus haut & le plus ſolempne judgment de ceſte terre, lour ſoit allowe, & lieu teigne. i. e.

That what had been theretofore awarded them, and adjudged in Parliament, which was the moſt high and moſt ſolemn Judgment of this Land, might be allowed them, and might take Place.

Dorſo Anſwer.

" Foraſmuch as this Matter has heretofore been, *aſſentu & agard en* " *plein Parlement*; *qu'eſt ſi haut agard & fait en le plus haut place en* " *Roialme*, i. e. Which is ſo high an Award, and made in the higheſt " Place in the Realm, let Execution be done of the former Award, " and let the Steward and others, as Occaſion requires, be command- " ed to ſurcreaſe, and to ſuffer the Tenants to make their Profits *ſo-* " *lonc le primer agard*, and that they do nothing derogatory, or con- " trary to the ſaid Award, upon Pain of being puniſhed as ſuch ought " to be, who *contravene cy haut agard*, and if they do not obey, let " ſpeedy Proceſs be made againſt the Diſobedient."

And now it is fit we apply this Caſe, to the Matter in Queſtion.

We ſee the Ground and Foundation of it was an Award in Parliament; which, as to all other inferior Courts, was ſuſceptible of no Alteration or Oppoſition, becauſe that would have tended to diminiſh and overthrow the Rights and Preheminences of a *Plea in Parliament.*

The Sixth PRECEDENT.

We have before given the Award of Parliament touching the Archbiſhop of *York*, which was adjudged both ſolemnly and legally by the Chancellor, Treaſurer, the Juſtices, and others of the King's Council; that it ought to be obeyed and reverenced by them all, and was not to be diſputed by the Twelve Judges of *Weſtminſter Hall*.

Now becauſe one Branch of the Award was, that the Archbiſhop ſhould be ready to anſwer the King, when and where he pleaſed; in *Michaelmas* Term, 5 *Edward* III. a Writ of *Quo Warranto* was brought in the Court of *Common Pleas* againſt the Archbiſhop, who, being demanded, appeared not. Whereupon

The Year Book, Mich. *Term*, 5 Edw. III. fol. 286. b. pl. 113. *Quo Warranto*.

Schardelow prayed for the King, "That the Franchiſe might be ſeiz-"ed into the King's Hands for his Default; as was uſually done be-"fore the Juſtices in Eyre."

Parning, "Proceſs in Eyre, muſt not be made here; for this Place "is for the holding of Common Pleas, for which Reaſon that Proceſs "ought not to be iſſued out, for this Writ is not grounded upon the "Archbiſhop's Claim, as it is in Eyre."

Upon which the Court took time to adviſe, and thus ſtood the Caſe till *Hilary* Term, in the 6th Year of that King, and then it came on again.

Parning urged for the Archbiſhop, "That he ought not to anſwer "there, for that King *Edward* I. had made a Statute, that Pleas of *Quo* "*Warranto* ſhould be held before Juſtices in Eyre, and in their proper "Counties; and for that it was enacted by a Statute in that preſent King's "Reign, that neither by Writ under the Great Seal, nor Privy Seal, "the Common Law ſhould be diſturbed; but that all Men ſhould have "the Benefit thereof: Wherefore he conceived that againſt a Statute, "which was Common Law to all Men, the Archbiſhop ought not to "be put to anſwer."

Hilary *Term*, 6 Edw. III. fol. 246. pl. 15. *Quo Warranto*.

Schardelow, "When you ſued by Petition to be reſtored to your Poſ-"ſeſſion, it was delivered to you in this Manner, *viz. Que per Parle-*"*ment agard fuiſt, que le Roi poit prendre ſon breif devers vous, ou &*"*quand luy plerret: Et agard du Parlement eſt la pluis haut Ley que ſoit.*"*i. e.* That it was awarded in Parliament that the King might take his "Writ againſt you, when and where he pleaſed; and an Award in Par-"liament is the higheſt Law that is: And ſince you make no Anſwer, "we pray that the Franchiſe may be ſeized into the King's Hands."

Claver ſaid, "That the Archbiſhop's Aſſent could not enable the "Court to hold Plea of that Cauſe, where their having *Conuſance* of "it is againſt Law."

* Then *Herle*, Chief Juſtice, who gave the Rule, ſaid thus, *viz.* "You were reſtored to your Poſſeſſion by an Award of Parliament, and "by the ſame Award it was adjudged, That ye ought to anſwer the "King when and where he pleaſed, and you would have the Benefit "of this Award yourſelves, and would ouſt the King of the Benefit of "it; which cannot be done."

And thereupon Serjeant *Parning* anſwered over.

"From this Caſe we may obſerve, that the Judges eſteemed an "Award in Parliament equal to an Act of Parliament, as to the "inferior Courts, and able to exempt a particular Caſe awarded out of "a general Act of Parliament."

Now whoever will impartially conſider and compare this Caſe with the former Precedents, muſt confeſs, that, as it explains them, ſo it clearly proves my Propoſition, *viz.*

That an Award in Parliament could not be changed or altered by any Interpretation of the Judges of *Weſtminſter Hall*, becauſe it was an Award in Parliament, which was a Judgment irreverſible by any inferior Court whatſoever.

The Seventh PRECEDENT.

Rot. Parliam. 40 Edw. III. No. 13,14,15, 16.

On *Monday*, being the 11th Day of *May*, in the 40th Year of the Reign of *Edward* III. it was ſhewn *devant les Grands & Communes en Parlement*, by Monſ. *Thomas de Ludlow*, Chief Baron of the *Exchequer*, That one *William*, Son and Heir of *William de Septivans*, who held Lands of the King in Chief, as of his Crown, and who had ſued Livery out of the King's Hands by Writ of *Ætate Probandâ*, was then under Age, as appeared by an Inqueſt taken before him the ſaid *Thomas de Ludlow* and others, and returned into the *Chancery*; which Inqueſt, with the Record, Proceſs, and Evidences concerning that Caſe, afterwards on *Monday*, *in Craſtino Inventionis Sanctæ Crucis*, were ſhewn, read, and examined,

Coram 1. *Ipſo Domine Rege*,
2. *Prælatis, Magnatibus*,
3. *Et Communitate Regni Angliæ*,

in eodem Parliamento. And the ſaid *William*, having before been inſpected by the Lords, and then again being preſent, *viſum eſt toti Parliamento, quod idem Willielmus filius Willielmi non erat plenæ ætatis, ſicut in probatione prædicta continetur, per quod conſideratum eſt in dicto Parliamento.*

* *The Precedent of the Archbiſhop's cannot be ſaid to contravene a Statute, becauſe it was a particular Caſe, in which the Archbiſhop had agreed to anſwer the King, when and where he pleaſed, and was thereupon put into Poſſeſſion; and the known Maxims of the Law are, that* Quilibet poteſt renunciare juri pro ſe introducto, *and that* Volenti non fit injuria.

I. That

I. That the firſt Office, founded upon the Writ *de Ætate Probandâ*, ſhould be of no Force nor Effect.

II. That all the Lands and Tenements, with their Appurtenances, which had been his Father's, and which, by Reaſon of his Minority, had been ſeized into the King's Hands, and had been delivered to *William* the Son, as being ſuppoſed then of full Age, by Colour of a falſe Office formerly found, ſhould be re-ſeized into the King's Hands.

III. That all Charters, Eſcripts, and Obligations, as well upon the Statute Merchant, and of the Staple, as others, and all Recognizances, made by the ſaid *William* the Son, ſhould be revoked, caſſated, and annulled: And,

IV. That Proceſs of *Scire Facias* ſhould be awarded againſt all ſuch as the ſaid *William*, the Son, had aliened any Lands, or granted any Rents to, or contracted any Debts with, that they ſhould ſhew Cauſe why the Lands, Tenements, and Rents ſo aliened, ſhould not be reſeized into the King's Hands, and the Charters, Eſcripts, Statutes, Recognizances, Obligations, and other Deeds by him made, caſſated and annulled, as void and erroneous; and further to do and receive, as to Juſtice ſhould appertain in that Behalf.

I have added this Precedent to the former, as conceiving it pertinent to the Matter in Hand; for

1. It cannot properly be called an Act of Parliament; becauſe it was not by Bill, nor had it the formal Proceedings which were requiſite to make it an Act of Parliament as now underſtood.

2. Neither was there any Writ of Error before the Lords.

3. But it was a final Reſolution of a particular original Caſe given in full Parliament, upon public Conference, and ſolemn Debate, and therefore could be no other than, according to my Definition, an Award in Parliament.

Which was, as I ſaid before, of ſo high a Regard in Law, that it could not be altered by any Conſtruction that could be made thereof by the Juſtices in *Weſtminſter Hall.*

Becauſe the poſitive and known Rule of the Law of *England* ever was (as we have ſhewed elſewhere)

That thoſe Bas Courts and Places ought to be, and never were other than Executors, not Executioners, of the ancient Laws and Cuſtoms of the Realm, and Ordinances, and Eſtabliſhments of Parliaments. Rot. Parliam. 11 Rich. II. pars 3. N°. 14.

The Conclusion.

So that it is a mere Surmiſe and Fiction raiſed and ſpread abroad in this laſt Age, to aſſert,

That the Judges of the *King's Bench*, of the *Common Pleas*, and Barons of the *Exchequer*, being Judges of the Realm, the People were bound, laſtly and finally, to ſubmit themſelves to their Judgments for Matters of Law.

CHAP.

CHAP. IV.

When any Doubts and Differences of Opinions aroſe amongſt Lawyers, concerning what the Common Law was in Points of great and weighty Importance, ſuch Doubts and Differences were by the ancient Courſe and Practice declared and ſettled, not by the Judges of Weſtminſter Hall, *but by the Law-making Power of the Kingdom.*

I. WE read in the *Statute-Book*, That *anno Dom.* 1279. and in the 7th Year of *Edward* I. which is above four hundred Years ſince, that King ſent a Writ to the Juſtices of his Bench, telling them, That whereas then of late, before certain Perſons deputed to treat upon ſundry Debates had between him and certain great Men of the Realm, amongſt other Things, it was accorded, that in his next Parliament, after Proviſion ſhould be made by him and the common Aſſent of the Prelates, Earls and Barons, that in all Parliaments, Treaties and other Aſſemblies, which ſhould be made in the Realm of *England* for ever, That every Man ſhould come without all Force and Armour, well and peaceably to the Honour of him, and the Peace of him and his Realm.

To all Parliaments and Treaties every Man ſhall come without Force and Arms. Pulton's Stat. 7 Ed. I.

And that then in his next Parliament at *Weſtminſter*, after the ſaid Treaties,

1. The Prelates, Earls, Barons,
2. And the Commonalty of the Realm,

there aſſembled, to take Advice of that Buſineſs; ſaid, That to him it belonged, and his Part was through his Royal Seigniory, ſtraitly to defend Force of Armour, and all other Force againſt his Peace, at all Times when it ſhould pleaſe him; and to puniſh them which ſhould do contrary, according to his Laws and Uſages of his Realm: And that thereunto they were bound to aid him, as their Sovereign Lord, at all Seaſons, when need ſhould be:

Commanding the Juſtices, That they ſhould cauſe thoſe Things to be read before them in the ſaid Bench, and there to be enrolled.

Notes upon the foregoing Statute.

Upon Peruſal of this Statute, the Reader may note,

1. That the Parliament declared, whoever ſhould offend againſt this Act, ſhould be puniſhed. But how? according to the *Laws* and *Uſages* of the *Realm*.

2. And that thereunto they were bound to aid him, as their Sovereign Lord, at all Seaſons, when need ſhould be.

So that neither King nor People were to make their own Wills the Meaſures of Government; but both were to be regulated by the Laws and Uſages of the Kingdom.

3. And laſtly, The Judges, for any thing appears by the Statute, were no ways concerned in ſettling thoſe Debates and Differences by their Votes; that was Work for a Parliament: The Juſtices were only commanded to read the Statute in Court, and then to cauſe it to be there enrolled.

Statutum de tertis Templariorum, *made* ann. 17 Ed. II. annoque Dom. 1323. Pulton's Stat.

Upon the Diſſolution of the Knights Templars, *here a Doubt aroſe who ſhould have their Lands.*

II. Upon the Diſſolution of the Military Order of the *Templars*, it was a Doubt, Who ſhould have their Lands? Whereupon in a Parliament held in the 17th of *Edward* II. great Conference was had before the King himſelf, in the Preſence of

1. The Prelates, Earls, Barons, Nobles,

2. And Great Men of the Realm, and others there preſent,

Whether the Lords of the Fees or others, which held thoſe Lands, might retain them by the Law of the Realm, and with ſafe Conſcience.

The Judges of Weſtminſter Hall *no fit Judges to determine this Matter.*

Whereupon the great Part of the King's Council, as well the Juſtices as other Lay Perſons, being aſſembled together; the ſaid Juſtices affirmed preciſely, That the King and other Lords of the Fees might well and lawfully, by the Laws of the Realm retain the aforeſaid Lands as their Eſcheats, in regard of the Ceaſing and Diſſolution of the Order aforeſaid.

But by Conſent of the King and Parliament thoſe Lands were ſettled upon the Knights Hoſpitallers.

But becauſe thoſe Lands had been given to the Brethren of that Order, in Defence of *Chriſtians* and the *Holy Land*, againſt *Pagans* and *Saracens*, and other Enemies of *Chriſt* and *Chriſtians*, and the Univerſal Holy Church; thoſe Lands were ſettled upon the Order of the Brethren of the Hoſpital of St. *John* of *Hieruſalem*.

De termino Paſchæ, 3 Edw. III. Plac. 1. Quare impedit.

1. By Conſent of the King, the Noblemen and others aſſembled in the ſaid Parliament. Or, as it is expreſſed in the *Year Book* of *Edward* III.

2. *Per le Roy & per ſon Common Counſell:* Or,

3. *Per grant d'appoſtel de Roy, & de Common Counſell.*

An. 14 Ed. III. *it was ordained in Parliament, that the Realm of* England *and the People thereof ſhould not be ſubject to the King or Kingdom of* France. Pulton's Stat. 14 Edw. III.

III. In the 14th Year of King *Edward* III. there was a Doubt conceived by ſome People, Whether or no upon the Realm of *France* its being devolved to this King, as Heir of the ſame, the Realm of *England* might

might not be put in Subjection to the King and Kingdom of *France* in Time to come?

Whereupon it was enacted by Parliament, That neither by the Cauſe or Colour of that, That the King was King of *France*, and that the ſaid Realm pertained to him; or that he cauſed himſelf to be named King of *France* in his Style, or that he had changed his Seal, or his Arms; nor for the Commandments which he had made or ſhould make as King of *France*, the Realm of *England*, nor the People of the ſame, ſhould not in any Time to come be put in Subjection or Obeyſance of the King, his Heirs or Succeſſors, as Kings of *France*; but ſhould be free and quit of all manner of Subjection and Obeyſance aforeſaid; as they were wont to be in the Time of the King's Progenitors, for ever.

This rare Caſe of mighty Concern to the Kingdom, not left to the Deciſion of the Judges, but was ſettled by Judgment of Parliament.

This was a rare Caſe, and a Matter of great Import and Conſequence; and therefore we ſee our wiſe Anceſtors would not leave ſuch dangerous Doubts in Law to be reſolved by the Etymological Interpretations, Definitions, Deſcriptions, Diſtinctions, Differences, Diviſions, Subdiviſions, Alluſion of Words, Extenſion of Words, Conſtruction of Words, which might in After-Times be made by the Wit and Art of the Judges of *Weſtminſter Hall:* No, but all thoſe new and high Points were ſettled by Judgment of Parliament.

Vid. *Speech of the Lord Chancellor* Elleſmere *in the* Exchequer Chamber, *touching the* Poſt-nati, p. 60.

IV. There was another great Doubt aroſe in the Reign of the ſaid King *Edward*; viz. Whether by the Common Law, Children born in the Parts beyond the Sea, out of the Legiance of *England*, ſhould be able to demand any Inheritance within the ſame Legiance, or not?

A Statute made ann. 25 Ed. III. *of thoſe that be born beyond Sea.* Pulton's Stat.

This was a new Queſtion of ſo extraordinary a Concern, that King *Edward* having called a Parliament in the 25th Year of his Reign, referred the Conſideration thereof to the Prelates, Earls, Barons, and other Wiſe Men of his Council there aſſembled, He being willing that all Doubts and Ambiguities ſhould be put away, and that the Law in that Caſe ſhould be put in Certainty:

All which, having deliberated upon this Point, of one Aſſent ſaid, That the Law of the Crown of *England* was, and always had been ſuch, That the Children of the King of *England*, in whatſoever Parts they were born, in *England* or elſewhere, were able and ought to bear the Inheritance after the Death of their Anceſtors.

Which Law,

1. The King,
2. The ſaid Prelates, Earls, Barons, and other Great Men,
3. And all the Commons,

then aſſembled, did affirm, and approve for ever.

Here we ſee another great and new Doubt in Law reſolved and ſettled only in Parliament.

After which, they proceed to declare the Law in Caſe of Subjects.

Thus

Thus we ſee the King durſt not rely upon the *Arbitria Judicum*, but did *recurrere ad Parliamentum, & ad reſponſa Parliamenti*; to make a concluding and binding Judgment.

Ex libro Statutorum Gallice editorum. 2 R. II. cap. 7.

V. *Anno* 2 *Richard* II. That King having underſtood by certain Letters then lately come from ſome Cardinals, Rebels againſt Holy Father *Urban*, then Pope, as otherwiſe by common Fame, that there was Diviſion and Diſcord betwixt the ſaid Holy Father and the ſaid Cardinals, who endeavoured with all their Might to depoſe him from the Eſtate of Pope, and to excite and move by falſe Suggeſtions, Kings and Princes and Chriſtian People againſt him, to the great Peril of their Souls, and to very evil Example; King *Richard* thereupon cauſed the ſaid Letters to be ſhown to the Prelates, Lords, and other Great and Wiſe Men of his Kingdom, then preſent in Parliament. Which Letters being read and underſtood; and much Deliberation having been thereupon had, it was by the ſaid Prelates pronounced and publiſhed, by many great and notable Reaſons then ſhewn in full Parliament, as well by Matter contained in the ſaid Letters as otherwiſe, that the ſaid *Urban* was duly elected Pope, and that therefore he was, and ought to be the true Pope, and him as Pope and Head of Holy Church, Men ought to accept and obey, *et a ceo faire s'accordent*

A great Doubt ariſing who ſhould be acknowledged to be lawful Pope here.

1. *Touts les Prelates, Seigniors,*
2. *Et Communes,*

in that Parliament.

It was adjudged in full Parliament, that Urban VI. *was duly elected Pope, and that none other but he ſhould be acknowledged for true and lawful Pope here in* England.

And it was alſo aſſented, That all the Benefices and other Poſſeſſions, which the ſaid Cardinals Rebels, and all other their Coadjutors, Fautors, Adherents, or any other Enemies of the King and of his Kingdom, had within the Dominion of the King, ſhould be ſeized into the King's Hands; and he be anſwered the Iſſues and Profits of the ſaid Benefices and Poſſeſſions, ſo long as they ſhould remain in his Hands for the Cauſe aforeſaid.

And it was moreover then ordained, That if any of the King's Leiges, or other within his Power, did purchaſe by Proviſion a Benefice or other Grace from any other as Pope, than of our Holy Father *Urban*, or ſhould be obedient to any other Perſon as Pope, he ſhould be put out of the Protection of the ſaid King, and his Goods and Chattels ſeized as forfeited.

We ſee here,

De Electione Papæ.

1. * That a Grand Doubt was riſen touching the Legality of the Election of a Pope, which was then a Point of a very weighty Importance indeed.

* 8 Die menſis Aprilis, electio Urbani papæ VI. ann. Dom. 1378. — Eodem anno quidam de Cardinalibus prima indictione Urbanum papam reliquerunt, & abierunt Avinoniam, ibique erexerunt Robertum epiſcopum Cibbonenſem in Summum Pontificem, quem vocaverunt Clementem papam, undè Schiſma maxima orta eſt in Eccleſia Chriſti, quibuſdam regibus & regnis uni adhærentibus, quibuſdam verò alteri. *Hen. de Knyghton de eventibus Anglia*, lib. 5. col. 2631 & 2632.

2. It is true the Prelates did inform the Parliament, that in their Opinions *Urban* was duly elected Pope, but that was only with Submiſſion to the Judgment of King, Lords, and Commons, in full Parliament aſſembled.

3. We do not find here, that the Judges did any thing that tended to the Deciſion of this great Point; no, this was wholly left to the Determination of the great Council of the Kingdom, who ſettled, and declared by their full and abſolute Authority, that *Urban*, and none other Anti-Pope, ſhould be accepted, and obeyed in *England*, as Pope and Head of Holy Church.

4. Nor was that all, but we ſee they likewiſe made Proviſion, that all thoſe who ſhould dare to contravene this their ſolemn Declaration and Judgment, ſhould be put out of the King's Protection, and ſhould forfeit all their Goods and Chattels.

But it may be objected that this Precedent does not make good what it is brought to prove, for it may ſeem that this Election could not come to be made a Doubt of at the Common Law. OBJECTION.

To which I anſwer, that as the Law then ſtood, whoever was Pope had, *virtute Apoſtolatus ſui*, ſeveral Profits, Rights, and Juriſdictions within the Realm: As for Inſtance, *Peter-pence*, Conſecration of Biſhops, receiving Appeals, and giving definitive Sentence thereupon, beſides other Privileges allowed to the See of *Rome* by Uſage: So that in theſe Reſpects it may properly be ſaid, that the Validity or Invalidity, of the Election of a Pope, when there was a Schiſm in the Papacy, was a Doubt at the Common Law, and muſt be determined by the ſupreme Judicature of the Realm; namely, the *Parliament*. ANSWER.

But to proceed,

VI. *Henry* V. having conſidered the long Vacancy of the Apoſtolic See *pur le damnable Sciſme*, which had then continued for a long Time in Holy Church, and then was not known how long it might ſtill laſt. And that certain Cathedral Churches within the Kingdom, which were of the Foundation of his noble Progenitors, and belonged to his Patronage, had been for ſome Time, and then were, deſtitute of Paſtoral Government, becauſe the Perſons that were elected into the ſame could not be confirmed in Parts beyond the Sea, for want of an Apoſtle, *Combien que noſtre dit Seigniour le Roy ſur ceo ait attroie ſon Roial Aſſent*, to the great Decreaſe of Divine Service in the ſaid Churches, Subſtraction of Hoſpitality, great Peril of many Souls, Devaſtation and Deſtruction of the Lordſhips and Poſſeſſions belonging to the ſame, and the Impoveriſhment of ſuch Biſhops elect; for that by Poſſibility all the Cathedral Churches within this Realm might become void in like manner, and ſo be deſtitute of Government, and the King and his Realm, of Council, Comfort, and Aid, which they ought to have of the Prelacy.

L'ordinance pur les Eſlitzas Eveſchees durant la preſente, voidance del See Papale. Rot. Parliam. 3 H.V. N°. 11.

Conſidering alſo that in diverſe foreign Parts ſince the Voidance of the ſaid See, diverſe Confirmations had been made, and were then daily made by the Metropolitans of the Places, as he was credibly informed, and willing for that Cauſe that he might ouſt the ſaid Miſchief, to provide ſuch Remedy as it behoved.

A new Law made in Parliament, touching the Conſecration and Confirmation of Biſhops here in England, *by their Metropolitans, during the Anti-Papacy at* Rome.

He, *de plein & deliberate Advis & Aſſent*

1. *Des Seigniours,*
2. *Et Communes de ſon Roialme,*

preſent in a Parliament held at *Weſtminſter, anno Regni ſui* 3, willed and ordained,

"That the Perſons ſo choſen and to be choſen within his Kingdom, "during the Vacancy of the ſaid See Apoſtolic, ſhould be confirmed "by the Metropolitan of the Places, without Excuſe or further Delay "in that Behalf; and that the King's Writs, if need required, ſhould "be directed to the Metropolitans, charging them to make the ſaid "Confirmations, and to perform all that to their Office belonged, as "alſo to the Biſhops elect, that they on their Part ſhould effectually "proſecute their ſaid Confirmations, that through Default of ſuch "Metropolitans or Biſhops elect, Damage or Prejudice might not en-"ſue to the King and to his Realm, and to the ſaid Churches for "the Cauſes aforeſaid, *que Dieu ne voille.*"

A general Obſervation.

All that I ſhall obſerve upon this Ordinance of Parliament ſhall be, That whereas by the Courſe of Antiquity it appears, even from the coming in of *Auſtin*, the Monk, that after the Biſhops were elected, they were not look'd upon to be perfect Biſhops, till they were conſecrated by Authority derived from the Pope: Now in this preſent Caſe it is plain, that ſome Biſhops had been elected, and it is as plain, that the King had given his Aſſent thereto; from whence the Doubt aroſe, whether or no thoſe Biſhops, for want of the uſual Conſecration, which at that Time could not be had, were (being then conſecrated by the Metropolitan) legal Biſhops? This being a difficult Queſtion, we ſee it could not be ſettled by any leſs Juriſdiction or Power, than that of King, Lords, and Commons, aſſembled in Parliament, and by Authority thereof.

I go on:

Pulton's Stat. 20 Hen. VI. *cap* 9. *The Order of Trial of Ducheſſes, Counteſſes, or Baroneſſes, being indicted of Treaſon or Felony.* Magna Charta, *cap.* 29.

VII. In the Parliament held 20 *Henry* VI. a Statute was made concerning the Trials of Ducheſſes, Counteſſes, and Baroneſſes, upon Indictments of Treaſons and Felonies. The Statute recites, that whereas it was contained in the great Charters, among other things, "That no "Freeman ſhould be taken or impriſoned, or diſſeized of his Freehold, "or his Liberties, or Free-Cuſtoms, or ſhould be outlawed, or baniſhed, "or in any wiſe deſtroyed; nor would the King go upon him, nor ſend "upon him, but by the lawful Judgment of his Peers, or by the Law "of the Land;" in which Statute, is no mention made how Women,

Ladies

Ladies of great Eſtate in reſpect of their Huſbands, Peers of the Land, married or ſole; that is to ſay, Ducheſſes, Counteſſes, or Baroneſſes, ſhould be put to anſwer, or before what Judges they ſhould be judged upon Indictments of Treaſons, or Felonies, by them committed or done, in regard whereof it was a Doubt in the Law of *England*, before whom and by whom, ſuch Ladies ſo indicted ſhould be put to anſwer, and be judged.

Whereupon the King, being willing to put out ſuch Ambiguities and Doubts, did declare by Authority of Parliament, that ſuch Ladies ſo indicted of any Treaſon or Felony by them done, or thereafter to be done, whether married or ſole, that they thereof ſhould be brought to anſwer, and put to anſwer, and adjudged before ſuch Judges and Peers of the Realm, as Peers of the Realm ſhould be, if they were indicted or impeached of ſuch Treaſons or Felonies done, or thereafter to be done, and in like Manner and Form, and in none otherwiſe.

It is true this Statute is grounded upon a Branch of the great Charter, or Statute of *Magna Charta*, and explains it, but the Statute of 20 *Henry* VI. *ne fuit forſque Declaration de la Common Ley*, as my Lord *Coke* affirms in the Counteſs of *Rutland*'s Caſe. Coke, *lib* 6. *fol.* 52. b.

This Statute will admit of no Exception: For evident it is from thence, that the Opinions and Sentence of the learned Judges in *Weſtminſter Hall*, were far from being thought of ſufficient Authority to decide ſo great an Ambiguity and Doubt in a Point of the Common Law. And therefore we ſee it was ſettled by the Law-making Power of the Kingdom. *This Statute of* 20 Hen. VI. *was but declarative of the Common Law.* *The Parliament only did ſettle this Doubt in Law.*

But further,

VIII. In the 21ſt Year of *Henry* VIII. there was an Act made concerning taking of Mortuaries, and, as the Statute ſays it was, to ſettle for the future ſuch Queſtion, Ambiguity, and Doubt, as had chanced and riſen upon the Order, Manner, and Form, of demanding, receiving, and claiming of Mortuaries, otherwiſe called *Corſe-preſents*. Raſt. Stat. 21 Hen. VIII. *cap.* 6. *The Uncertainty of taking of Mortuaries ſettled by Parliament.*

IX. Nor did the Parliament of the 24th of *Henry* VIII. act by Humour, when upon a Queſtion and Ambiguity which had then aroſe, whether if a Man ſhould ſlay another who ſhould attempt to rob or murder, or felonioufly attempt to break any Dwelling Houſe in the Night-time, he ſhould forfeit his Goods and Chattels for the ſame, as any other Perſon ſhould do that by Chance-Medly ſhould happen to kill and ſlay any other Perſon in his, or their Defence? The Parliament did for the Declaration of that Ambiguity, and Doubt, enact, That they ſhould not forfeit, but ſhould be fully acquitted and diſcharged of the Death of any ſuch evil diſpoſed Perſon in ſuch manner ſlain. Raſt. Stat. 24 Hen. VIII. *cap.* 5. *A Queſtion in Law ariſing, Whether a Man, killing a Thief, ſhould forfeit his Goods.* *The Parliament reſolved he ſhould not.*

Again,

Again,

Raſtal's Stat. 1 Edw. VI. *cap.* 4. *Doubts about Tenures holden* in Capite, *reſolved in Parliament.*

X. In the 1ſt of *Edward* VI. an Act was made for the taking away Ambiguities, Queſtions, and Doubts which had been moved and ſtirred in divers and ſundry the King's Courts of Record, concerning Lands coming into the King's Hands by Attainders, by Act of Parliament, by Verdict, Confeſſion, Conviction, or Outlawry, *&c.*

Raſtal's Stat. 1 Edw. VI. *cap.* 8. *Queſtions ariſing about the Validity of the King's Letters Patents, determined only by Authority of Parliament.*

XI. Again in the ſame Year, another Act paſſed for confirming ſuch Letters Patents, *&c.* as were made by him ſince 28th of *January* laſt, under the Great Seal, the Seal of the *Duchy of Lancaſter*, and the Seal of the Court of Augmentations and the Revenues of his Crown, or any of them, of divers Honours, Caſtles, Manors, Lands, *&c.* to avoid and hinder ſundry and many Ambiguities, Doubts, and Queſtions, which had or might thereafter happen to be moved, objected, alledged, invented, procured or ſtirred, as well for miſ-naming, miſ-recital or non-recital of any of the ſame Honours, *&c.*

To give one Inſtance more,

The Parliament declares, That the regal Power of this Realm is as fully and abſolutely in a Queen as in a King, by the Laws of England.

XII. In the ſecond Parliament of Queen *Mary*, an Act was made, declaring, That the Regal Power of this Realm was in the Queen's Majeſty, as fully and abſolutely as ever it was in any of her moſt Noble Progenitors, Kings of this Realm.

I will give the Act *verbatim*, with ſome Notes upon it:

Raſtal's Stat. ann. 1 Mariæ Parl. ſecund. *cap.* 1.

" Foraſmuch as the Imperial Crown of this Realm, with all Dig-
" nities, Honours, Prerogatives, Authorities, Juriſdictions, and Pre-
" eminences thereunto annexed, united and belonging, by the divine
" Providence of Almighty God is moſt lawfully, juſtly and rightfully
" deſcended and come unto the Queen's Highneſs that now is, being
" the very true and undoubted Heir and Inheritrix thereof, and inveſted
" in her moſt Royal Perſon, according unto the Laws of this Realm;
" and by Force and Virtue of the ſame, all Regal Power, Dignity,
" Honour, Authority, Prerogative, Pre-eminence, and Juriſdictions do
" appertain, and of Right ought to appertain and belong unto her
" Highneſs, as to the ſovereign ſupreme Governour and Queen of this
" Realm, and the Dominions thereof, in as full large and ample Man-
" ner, as it hath done heretofore to any other her moſt Noble Proge-
" nitors Kings of this Realm.

" Nevertheleſs, the moſt ancient Statutes of this Realm, being made
" by Kings then reigning, do not only attribute and refer all Preroga-
" tive, Pre-eminence, Power, and Juriſdiction Royal unto the Name
" of King; but alſo do give, aſſign, and appoint the Correction and
" Puniſhment of all Offenders, againſt the Regality and Dignity of the
" Crown and the Laws of this Realm, unto the King.

" By

" By Occaſion whereof, the malicious and ignorant Perſons may be " hereafter induced and perſuaded unto this Error and Folly, to think " that her Highneſs could, ne ſhould have, enjoy, and uſe ſuch like Royal " Authority, Power, Pre-eminence, Prerogative and Juriſdiction, nor " do, nor execute and uſe all Things concerning the ſaid Statutes, and " take the Benefit and Priviledge of the ſame, nor correct and puniſh " Offenders againſt her moſt Royal Perſon, and Regalty and Dignity " of the Crown of this Realm, and the Dominions thereof, as the " Kings of this Realm her moſt noble Progenitors have heretofore done, " enjoyed, uſed, and exerciſed.

" For the avoiding and clear Extinguiſhment of which ſaid Error or " Doubt, and for a plain Declaration of the Laws of this Realm in " that behalf;

" Be it *Declared* and Enacted by the Authority of this preſent Par- " liament, That the Laws of this Realm are, and ever have been, and " ought to be underſtood, That the Kingly or Regal Office of the " Realm, and all Dignities, Prerogative, Royal Power, Pre-eminences, " Priviledges, Authorities and Juriſdictions thereunto annexed, united " or belonging, being inveſted either in *Male* or *Female*, are and be, " and ought to be as fully, wholly, abſolutely, and entirely deem- " ed, judged, accepted, inveſted, and taken in the one as in the other; " ſo that what or whenſoever Statute or Law doth limit and appoint, " that the King of this Realm may or ſhall have, execute and do any " thing as King, or doth give any Profit or Commodity to the *King*, " or doth limit or appoint any Pains or Puniſhment for the Correction " of Offenders or Tranſgreſſors againſt the Regalty and Dignity of the " *King* or of the Crown; The ſame the *Queen* (being ſupreme Gover- " neſs, Poſſeſſor, and Inheritor to the Imperial Crown of this Realm, " as our ſaid Sovereign Lady the *Queen* moſt juſtly preſently is) may " by the ſame Authority and Power likewiſe have, exerciſe, execute, " puniſh, correct and do, to all Intents, Conſtructions and Purpoſes, " without Doubt, Ambiguity, Scruple or Queſtion; any Cuſtom, Uſe " or Scruple, or any other thing whatſoever to be made to the contrary " notwithſtanding."

Now upon this memorable Statute, give me leave to note;

Notes upon this Statute.

1. Firſt, That there was a Doubt, though it be ſaid to be an erroneous one, Whether the Regal Power was in Queen *Mary*, as fully and abſolutely as it had been in the Kings of this Realm?

2. And therefore for the plain Declaration of the *Laws* of the Realm in that behalf, it was Declared and Enacted by Authority of Parliament, That the Queen was inveſted with the ſame Regal Power that the Kings of this Realm formerly had; And that ſhe might exerciſe the ſame without Doubt, Ambiguity, Scruple or Queſtion; any Cu-

ſtom, Uſe or Scruple, or any other thing whatſoever to be made to the contrary notwithſtanding.

Now can any ſober Man think, that if that Queen and her Council had looked upon the extrajudicial Reſolutions of the Judges in *Weſtminſter Hall*, to have been of ſufficient Force and Authority to have finally determined a Doubt of ſo great a Conſequence, that it ſhould ever have been brought into Parliament? And the Law therein to be declared by Authority of Parliament? No certainly, that would never have been done.

The Concluſion. It is not difficult to produce Numbers of Statutes, whereby Queſtions, Ambiguities and Doubts, which happened to ariſe in Caſes at the Common Law, were declared, determined, and ſettled by Parliament; and that too in Matters of more ordinary Concern to the Publick, being compared with the foregoing Precedents.

But I conceive theſe are full enough to convince any reaſonable Man that my Aſſertion is true, *viz.*

That when any Doubts and Differences of Opinions aroſe amongſt Lawyers, concerning what the Common Law was in Points of great and weighty Importance; ſuch Doubts and Differences were by ancient Courſe and Practice, *Declared* and *Settled*, not by the Judges in *Weſtminſter Hall*, but by the Law-making *Power* of the Kingdom.

CHAP.

CHAP. V.

Where former Statutes have ſeemed dark and dubious, and by the ſubtle and nice Wits of learned Lawyers, were made liable to ſeveral different Conſtructions; the Parliament, as being the Higheſt Court and Seat of Juſtice, and who beſt knew their own Senſe and Meaning, wiſely provided additional explanatory Acts, to direct and guide the Judges of Weſtminſter Hall *how they ought to expound ſuch Statutes; and did not leave them to follow their own arbitrary Diſcretions, of interpreting thoſe Laws contrary to the true Deſign and Intent of the Makers thereof.*

MY laſt Chapter being upon ſeveral Doubts and Ambiguities what the Common Law was in Points of great Importance, which only could be declared and reſolved by Authority of Parliament; This is to ſhew, that where any Doubts and Ambiguities did ariſe upon the Expoſition of Statutes, that concerned the Publick Juſtice and Safety; thoſe likewiſe were ſtill ſettled and determined by other ſubſequent explanatory Statutes, and not by the Judges of *Weſtminſter Hall.*

To begin,

Stat. of Waſte, *made* 20 Ed. I.

The Judges differing in Opinion about a Point of Law, the Caſe was brought in pleno Parliam. *and there ſettled* Plac. Parliam. *fol.* 93.

I. In the Caſe of *William Butler*, *ann.* 20 *Edw.* I. in an Action of Waſte brought in the *Common Pleas*, foraſmuch as certain Juſtices did not agree in giving Judgment in that Caſe, the King himſelf brought the Caſe *in pleno Parliamento*; and there the Caſe was adjudged: And not only ſo, but

With Directions what ſhould be a Rule to them in Caſes of the like Nature.

1. The Juſtices of the *King's Bench* were likewiſe commanded *Quod in loquela prædicta, & in conſimilibus, de cætero procedant; & ſecundum quod inveniri contigerit, Judicium reddant.*

2. *Et*

2. *Et ſimiliter præceptum eſt Juſticiariis de Banco in pleno Parliamento, quod hoc idem coram eis de cætero faciant firmiter obſervari, &c.*

25 Edw. III. cap. 2. *concerning Treaſons.*

II. The Statute of the 25th of *Edward* III. entitled, *A Declaration what Offences ſhall be adjudged Treaſon*, recites, That divers Opinions before that Time had been, in what Caſe Treaſon ſhould be ſaid, and in what not: And therefore the King, at the Requeſt of the Lords and Commons, declared what Offences ſhould be adjudged Treaſon.

The Parliament only to be Judges in doubtful Caſes what ſhall be Treaſon.

After which it was enacted, That becauſe many other Caſes of Treaſon might happen in Time to come, which could not then be thought of or declared; if any ſuch other Caſe ſhould happen, the Juſtices ſhould tarry 'till Cauſe were ſhewed before the King and his Parliament.

Raſtal's Stat. 15 Rich. II. cap. 5. *Religious Mortmain.*

III. *Anno* 15 *Richardi* II. a Statute was made, reciting, That whereas it was contained in the Statute *De Religioſis*, that no Religious, ne other whatſoever he be, ſhould buy or ſell, or under Colour of Gift, or Term, or any other manner of Title, receipt of any Man, or in any Manner by Craft or Engine, of any manner cauſe to be appropriate unto him, any Lands or Tenements, upon Pain of Forfeiture of the ſame; whereby the ſaid Lands and Tenements in any manner might come to Mortmain.

And if any Religious or any other come againſt the ſame Statute, by Art or Engine in any manner, that it ſhould be lawful to the King and other Lords in the ſaid Lands and Tenements to enter, as in the ſaid Statute did more fully appear.

And that then of late by ſubtle Imagination, and by Art and Engine, ſome religious Perſons, Vicars, and other ſpiritual Perſons, had entered in divers Lands and Tenements, which were adjoining to their Churches, and of the ſame Lands by Sufferance and Aſſent of the Tenants had made Church-yards, and by Bulls of the Biſhop of *Rome* had dedicated and hallowed the ſame; and in them did make continually Parochial Burying, without Licence of the King or the Chief Lords:

Therefore it was Declared in this Parliament, That it was manifeſtly within the Compaſs of the ſaid Statute.

And moreover it was agreed and aſſented,

That all they that were poſſeſſed by Feoffment, or in any other Way, to the Uſe of religious Perſons, or other ſpiritual Perſons, of Lands and Tenements, Fees, Advowſon, or any other manner of Poſſeſſions, to the intent to amortiſe them, whereof the ſaid religious or ſpiritual Perſons did take the Profits; that between that and the Feaſt of St. *Michael* then next coming, they ſhould cauſe them to be amortiſed, by the Licence of the King, and of the Lords; or elſe that they ſhould ſell

ſell them, and alien them to ſome other Uſe, between that and the ſaid Feaſt, upon Pain to be forfeit to the King and to the Lords, according to the Form of the ſaid *Statute of Religious*, as Lands purchaſed by Religious People; and that from thenceforth no ſuch Purchaſe ſhould be made, ſo that ſuch Religious, or other Spiritual Perſons, ſhould take thereof the Profits, as afore is ſaid, upon Pain aforeſaid.

And it was farther declared, That the ſame Statute ſhould extend and be kept of all Lands, Tenements, Fees, Advowſons, and other Poſſeſſions purchaſed or to be purchaſed, to the Uſe of Guilds or Fraternities.

And moreover, it was Aſſented, That foraſmuch as the Mayors, Bailiffs, and Commons of Cities, Burroughs, and other Towns, that had a perpetual Commonalty; and others which had Offices perpetual, ſhould be as perpetual as People of Religion; and that from thenceforth they ſhould not purchaſe to them and to their Commons and Office, upon the Pein contained in the Statute *De Religioſis:* And alſo of That that others were poſſeſſed, or hereafter ſhould purchaſe to their Uſe; and they thereof took the Profits, it ſhould be done in like manner as afore is ſaid of People of Religion.

Perpetual Commonalty.

From whence we may note,

1. That there was Craft, Art and Engine, to elude the Force of the Statute *De Religioſis*, touching *Mortmain.*

2. That to meet with all ſubtle Imaginations, the Parliament, as being the Higheſt Court and Seat of Juſtice, and who beſt knew their own Senſe and Meaning, wiſely provided an additional explanatory Act, to direct and guide the Judges of *Weſtminſter Hall*, How they ought to expound that Statute in time to come.

3. And laſtly, the Parliament added a farther Explanation thereof, to corroborate and ſtrengthen it for the future.

Notes upon the foregoing Statute.

IV. At the Parliament of the 16th of *Richard* II. the Commons of the Realm ſhewed to the King, grievouſly complaining, That foraſmuch as the King and all his leige People ought of Right, and of old time were wont to ſue in the King's Court, to recover their Preſentments to Churches, Prebends, and other Benefices of Holy Church, to the which they had Right to preſent; the Cognizance of Plea, of which Preſentment belonged only to the King's Court of the old Right of his Crown uſed in the Time of his Progenitors, Kings of *England.*

Raſtal's Stat. 16 Rich. II. cap. 5.

The Commons grievous Complaint againſt the Uſurpations of the Pope both upon the King and Kingdom.

And when Judgment ſhould be given in the ſame Court upon ſuch Plea and Preſentment, the Archbiſhops, Biſhops, and other ſpiritual Perſons, which had Inſtitution of ſuch Benefices, within their Juriſdiction, were bound, and had made Execution of ſuch Judgment by the King's Commandments of all the Time aforeſaid, without Interruption (for that any other Lay Perſon might not make Execution,) and alſo were bound of Right to make Execution of many other of the

King's Commandments, of which Right the Crown of *England* had been peaceably ſeized, as well in the Time of the ſaid King, as in the Time of its Progenitors, 'till that Day.

But that then of late divers Proceſſes were made by the Biſhop of *Rome*, and Cenſures of Excommunication, upon certain Biſhops of *England*; becauſe that they had made Execution of ſuch Commandments; to the open Diſheriſon of the ſaid Crown, and Deſtruction of the ſaid King, his Law, and all his Realm, if Remedy ſhould not be provided.

And the Commons farther tell the King, That it was ſaid, and the common Clamour made, That the Biſhop of *Rome* had ordained and purpoſed to tranſlate ſome Prelates of the ſame Realm, and ſome out of the Realm, and ſome out of one Biſhoprick into another within the ſame Realm, without the King's Aſſent and Knowledge, and without the Aſſent of the Prelates, which ſo ſhould be tranſlated; which Prelates were much profitable and neceſſary to the King, and to all his Realm: By which Tranſlations (if they were ſuffered) the Commons ſaid, That the Statutes ſhould be defeated and deſtroyed, and his ſaid Liege Perſons of his Council, without his Aſſent and againſt his Will, withdrawn and gotten out of the Realm, and the Subſtance and Treaſure of the Realm would be born away; and ſo the Realm would be deſtitute, as well of Council as of Subſtance, to the final Deſtruction of the Realm: And ſo the Crown of *England*, which had been ſo free at all Times, that it had been in Subjection to no Realm, but immediately ſubject to God, and to none other, in all Things touching the Regalty of the ſame Crown, ſhould be ſubmitted to the Biſhop of *Rome*, and the Laws and Statutes of the Realm would be by him defeated and deſtroyed at his Will, in perpetual Deſtruction of the King, his Crown and his Regalty, and of all his Realm, which God defend.

And moreover, the Commons ſaid, That the ſaid Things ſo attempted, were clearly againſt the King's Crown and his Regalty, uſed and approved of in the Time of all his Progenitors: Wherefore they declared, That they and all the Liege Commons of the Realm would be with the King and his ſaid Crown and his Regalty in the Caſes aforeſaid, and in all other Caſes attempted againſt Him, his Crown, and his Regalty, in all Points to live and die.

And moreover they prayed the King, and him required by way of Juſtice, that he would examine all the Lords in the Parliament, as well Spiritual as Temporal ſeverally, and all the States of the Parliament, how they thought of the Caſes aforeſaid, which were ſo openly againſt the King's Crown, and in Derogation of his Regalty; and how they would be in the ſame Caſe with the King, in upholding the Rights of his ſaid Crown and Regalty.

Whereupon the Lords Temporal being ſo demanded, anſwered every one by Himſelf, That the Caſes aforeſaid were clearly in Derogation

of

of the King's Crown, and of his Regalty, as it was well known, and had been of a long Time known, and that they would be with the ſame Crown and Regalty, in thoſe Caſes eſpecially, and in all other Caſes which ſhould be attempted againſt the ſame Crown and Regalty, in all Points, with all their Power.

And moreover it was demanded of the Lords Spiritual there being, and of the Procurators of others being abſent, their Advice and Will in all thoſe Caſes: Which Lords, that is to ſay the Archbiſhops, Biſhops, and other Prelates being in the Parliament ſeverally examined, making Proteſtations that it was not their Mind to deny nor affirm that the Biſhop of *Rome* might not excommunicate Biſhops, nor that he might make Tranſlations of Prelates, after the Law of Holy Church, anſwered and ſaid, That if any Executions of Proceſſes made in the King's Court (as before) were made by any, and Cenſures of Excommunication were made againſt any Biſhop of *England*, or any other of the King's leige People, for that they had made Execution of ſuch Commandments, and that if any Execution of ſuch Tranſlations were made of any Prelates of the ſame Realm, which Prelates were very profitable and neceſſary to the King and to his ſaid Realm, or that the ſage People of his Council, without his Aſſent, and againſt his Will, will be withdrawn and eloyned out of the Realm, ſo that the Subſtance and Treaſure of the Realm might be deſtroyed, that the ſame was againſt the King and his Crown, as it is contained in the Petition aforenamed.

And likewiſe the ſame Procurators, every one by himſelf being examined upon the ſame Matters, anſwered, and ſaid in Name and for their Lords, as the ſaid Biſhops had ſaid and anſwered, and that the ſaid Lords Spiritual would, and ought to be, with the King, in theſe Caſes lawfully in maintaining of his Crown and his Regalty, as they be bound in their Ligeance.

Whereupon the King, by the Aſſent aforeſaid, and at the Prayer of his ſaid Commons, ordained and eſtabliſhed,

" That if any ſhould purchaſe or purſue, or cauſe to be purchaſed " or purſued, in the Court of *Rome*, or elſewhere, any ſuch Tranſla- " tions, Proceſſes and Sentences of Excommunications, Bulls, Inſtru- " ments, or any other Things which touch the King, againſt him, his " Crown, and his Regalty, or his Realm, as is aforeſaid: And they " which ſhould bring within the Realm, or them receive, or make " thereof Notification, or any other Execution within the ſame Realm, " or without, that they, their Notaries, Procurators, Maintainers, " Abettors, Fautors and Counſellors, ſhould be put out of the King's " Protection, and their Lands and Tenements, Goods and Chattels, " forfeited to the King, and that they ſhould be attached by their Bo- " dies, if they might be found, and brought before the King and his " Council, there to anſwer to the Caſes aforeſaid, or that Proceſs be " made againſt them by *Premunire facias*, in Manner as it was or-

" dained

"dained in other Statutes of Proviſors, and other which did ſue in "any other Court, in Derogation of the Regalty of the King."

Inferences from this Statute of Premunire.

Now if the Force of this Statute be well weighed by the judicious Reader, he muſt, unleſs he be a virulent and ill-deſigning Man,

Firſt in general obſerve, that it hath a double Aſpect; for,

It is a moſt memorable Declaration what the ancient Prerogative of the King was;

And likewiſe what the Rights of the Kingdom were in old Times.

Secondly, in particular, he muſt alſo confeſs,

1. That the Laws and Statutes of the Realm ought not to be defeated, and avoided at Will, to the Deſtruction of the King and Kingdom; they being abſolutely neceſſary for the Support of the Government, and the Safety of every Man's Life and Intereſt.

2. That after the Commons had ſolemnly debated, and ſeriouſly conſidered the many Miſchiefs of the Papal Uſurpations, and had delivered their Judgments upon them in Point of Law, they then prayed the King, and him required by way of Juſtice, that he would examine all the Lords in the Parliament, as well Spiritual as Temporal, and all the Eſtates of the Parliament ſeverally, how they thought of the Caſes aforeſaid.

And that being done,

3. The Lords Temporal unanimouſly concurred in Judgment with the Commons, that thoſe Matters were thereby againſt the King's Crown, and his Regalty, uſed and approved of in the Time of all his Progenitors.

4. But the Lords Spiritual, and the Procurators of thoſe Prelates who were then abſent from Parliament, anſwered cautiouſly, Yet notwithſtanding, the Petition or Remonſtrance of the Commons paſt into a farther Law, againſt Proviſions from *Rome*.

Pulton's Stat. 3 Hen. V. cap. 6. *The Statute of* 25 Edw. III. *concerning Treaſons explained by this Parliament.*

V. In a Parliament held 3 *Henry* V. becauſe before that Time great Doubt and Ambiguity had been, whether that clipping, waſhing, or filing of Money of the Land, ought to have been judged Treaſon or not; foraſmuch as no mention thereof was made, in the Declaration of the Articles of Treaſon made in the Parliament holden the 25th Year of *Edward* III. King *Henry* being willing to decide ſuch Doubt, and to put the ſame in Certainty, did by the Advice and Aſſent,

And by them adjudged, that clipping, waſhing, and filing, ſhall be High Treaſon.

1. Of the Lords Spiritual and Temporal. And

2. At the Requeſt of the Commons declare, that ſuch clipping, waſhing, and filing, ſhould be adjudged for Treaſon, and they which ſhould ſo clip, waſh, and file the Money of the Land, ſhould be adjudged Traytors to the King, and to the Realm, and ſhould incur the Pain of Treaſon.

Obſervations thereupon.

This ſhews the Wiſdom and Care of our Anceſtors, that Doubts and Ambiguities in Matters of Treaſon, ſhould not be left to the arbitrary Interpretations

Interpretations of the Judges of *Weſtminſter Hall*, but ſhould be * declared in Parliament.

For they were not ignorant, that reſolving Doubts in Matters of Treaſon was a Concern of ſo high a Nature, that it ought never to be intruſted in the Hands of Judges, choſen and paid by the Crown, which was to have the Forfeitures of ſuch Treaſons; nor wanted they ſufficient Evidence to prove, that Judges had been awed and influenced by great Men, corrupted by Bribes, intoxicated with the Love of Power, Vaſſals to their Paſſions and Revenge, and ſome groaning under the Temptation of Poverty.

VI. In the Parliament 8 *Henry* V. the Commons prayed, That whereas *Edward* III. late King of *England*, Great-Grand-Father of our Lord the King that now is, at his Parliament held at *Weſtminſter* on *Wedneſday* next after *Mid-Lent*, in the 14th Year of his Reign over *England*, and his 1ſt over *France*; reciting, That ſome People apprehending, that whereas the Kingdom of *France* was devolved to him, as right Heir thereof, and that foraſmuch as he was King of *France*, the Kingdom might, in Time to come, be brought into Subjection to the King and Kingdom of *France*, the ſaid late King having regard to the State of his ſaid Kingdom of *England*, and particularly that it never was, nor ought to be in Subjection and Obedience to the Kings of *France*, that had then been, nor to the Kingdom of *France*, deſiring to provide an entire Security for the ſaid Kingdom of *England*, and of his Leiges of the ſame, willed, granted, and eſtabliſhed, for himſelf, his Heirs, and Succeſſors,

Per Aſſent

1. *Des Prelatz, Countes, Barons,*
2. *Et Communes,*

de ſon dit Roialm d'Engleterre en ſon dit Parlement,

That by Reaſon or Colour of his being King of *France*, and that the Kingdom of *France* belonged to him, as aforeſaid, or of his ſtyling himſelf King of *France*, or of his having changed his Seal, or his Arms, nor for any Command which he had iſſued or ſhould iſſue in Time to come as King of *France*, his ſaid Kingdom of *England*, nor the People thereof, of what Eſtate or Condition ſoever they were, ſhould not, in Time to come, be brought into Subjection or Obedience to Him, his Heirs, and Succeſſors, as King of *France*; nor to Him, his Heirs, and Succeſſors, as Kings of *France* as aforeſaid, ſhould be

Royaulm de Angleterre n'eſtre Subject au Roy de France. Rot. Parliam. 8 Hen. V. N°. 25. *The Parliament declared that the Kingdom of* England *ſhould not be in Subjection or Obedience to* Henry V. *or his Heirs, as Kings of* France, *being an Explanation and Inforcement of the* 14th Edw. III. *beforementioned.*

* John Imperial, *who was Ambaſſador from the State of* Genoa *to* Richard II. *being murdered by* John Kerby *and* John Algore, *two Citizens of* London, Quel Caſe examiné & diſputé inter

1. Les Seigniors,
2. Et Communes,

Et puis monſtré

3. Al Roy

en Pleine Parlement, *it was there declared, determined, and aſſented, that it was Treaſon.* Rot. Parl. 3 Rich. II. N°. 18.

ſubject or obedient; but ſhould be free and quit of all manner of Subjection and Obedience aforeſaid, as they have uſed to be in the Time of his Progenitors, Kings of *England*, at all Times.

And whereas it was then come to paſs, that *Henry* V. by the Grace and mighty Aid of God, and by his Knight-like, diligent, and painful Labour, was at that preſent Heir and * Regent of the ſaid Kingdom of *France*, and that after the Death of *Charles* King of *France*, *Henry* V. and his Heirs, were to be Kings of *France* for ever, thanks be to God for the ſame,

The Commons prayed, that it might pleaſe the moſt noble and moſt mighty Prince, the Duke of *Glouceſter*, then Guardian of *England*, to ordain and eſtabliſh, by Authority of this Parliament, that the ſaid Grant and Eſtabliſhment of the ſaid late King *Edward*, as aforeſaid, might be confirmed and kept in all Points:

And moreover to ordain, by Authority aforeſaid, that by reaſon of King *Henry*'s being Heir and Regent of the Kingdom of *France*, and that He and his Heirs, after the Death of the ſaid *Charles* King of *France*, would be Kings of *France*, *que per mandement que noſtre Seigniour le Roy ad fait*, or that He, his Heirs, or Succeſſors, ſhould have Iſſue in Time to come, as Heir and Regent of the Realm of *France*, or as King of *France*, that the ſaid Kingdom of *England*, nor the People thereof, of what Eſtate or Condition ſoever they were, ſhould not in any Time to come be brought into Subjection nor Obedience to Him, his Heirs, and Succeſſors, as Heir Regent or King of *France*; nor to Him, his Heirs, and Succeſſors, as Heir Regent or King of *France*, be ſubject or obedient; but that they ſhould be free and quit of all manner of Subjection and Obedience aforeſaid at all Times.

RESPONS. *Soit l'Eſtatute ent fait tenuz & gardez.*

Inferences from this Statute. This is a great Inſtance of the mighty Prudence of an ancient *Engliſh* Parliament, who after they had by their Council, Blood, and Treaſure, enforced the three Eſtates of *France* to recognize *Henry* V. to be Heir and Regent of *France*, yet we ſee the Care of their own Safety, and their Poſterity made them to conſult timely, and provide effectually for all ſuch Means, as then were or might be neceſſary, to preſerve both themſelves and the Kingdom from future Dangers, whereunto the State might fall through lack of ſo much Care and Providence, as agreed with the Rules of Nature and common Reaſon. For what

Stat. 43 Eliz. cap. 18.

* Probatio pacis inter regna Angliæ & Franciæ nuper concluſæ
Per tres Status utriuſque Regni, viz.
1. Prælatorum & Cleri,
2. Necnon Procerum & Nobilium,
3. Ac etiam Civium & Burgenſium Civitatum, Villarum, & communitatum prædictorum regnorum:
Qui omnes eandem Pacem & omnia & ſingula contenta in eadem approbarunt, laudarunt, acceptarunt, roboraverunt, & authorizarunt. *Rot. Parl.* 9 Hen. V. *pars* 1. N°. 14.

could

could have been more fatal to the *Engliſh*, than after ſo many memorable Victories, which they had obtained over the *French*, at laſt to be made their perpetual Vaſſals and Slaves, and that too by Colour of Law to be declared by an uſurped Legiſlative Power of future Judges?

I ſhall purpoſely paſs by ſeveral Inſtances that might be given in ſucceeding Kings Reigns to juſtify my general Aſſertion, becauſe I would not ſwell this Chapter too big; and therefore will now come to the Time of *Hen.* VIII.

VII. The Statute of 4 *Hen.* VIII. *cap.* 3. touching Jurors in *London*, was expounded and interpreted by the Statute of 5 *Hen.* VIII. *cap* 5.

Pulton's Stat. 4 Hen. VIII. cap. 3. Id. 5 Hen. VIII. cap. 5.

VIII. Again, ſays another Act, Whereas divers Statutes Penal had been made againſt Strangers Artificers, for exerciſing of Handicrafts within this Realm, and for keeping of Houſes, Apprentices and Servants Strangers: And whereas ſithence the making thereof, Beer-Brewers and Bakers, which were Common Victuallers, and alſo Surgeons and Scriveners, being Strangers, inhabiting and dwelling within this Realm, had been put to Trouble and great Vexation, by occaſion of Informations brought againſt them upon the ſaid Statutes, ſuppoſing that Strangers uſing Baking, Brewing, Surgery or Writing, ſhould be Handy-crafts Men: Upon the which Information, great Doubts and Ambiguities had riſen,

Raſtal's Stat. 22 Hen. VIII. cap. 13.

Doubts ariſing whether Brewers, Bakers, Surgeons and Scriveners, being Strangers, ſhould be expounded Handy-crafts Men, according to the Intent of former Statutes, explained and ſettled in this Parliament.

Whether Strangers uſing any of the ſaid Myſteries or Sciences, ſhould be underſtood ſuch Hand-Crafts Men, as were intended by any the ſaid Statutes.

For plain Declaration thereof, it was *ann.* 22 *Hen.* VIII. enacted,

1. By the King,
2. And the Lords Spiritual and Temporal,
3. And the Commons,

in Parliament aſſembled, and by the Authority of the ſame, That no Perſon or Perſons, Strangers, being a common Baker, Brewer, Surgeon, or Scrivener, ſhould be interpreted or expounded Handy-crafts Men, in, for, or by reaſon of uſing any of the ſaid Miſteries or Sciences of Baking or Brewing, Surgery or Writing: And that all Informations, Suits, Actions and Proceſs, which then had been taken, or thereafter to be taken upon any of the ſaid Statutes againſt any ſuch Stranger or Strangers, being Bakers, Brewers, Surgeons or Scriveners, ſhould be by Authority of that Act void and of none Effect. Further,

IX. In the 31ſt of *Hen.* VIII. an Act of Parliament was made, That ſuch as were Religious Perſons might purchaſe, ſue and be ſued, in all manner of Actions: But foraſmuch as divers Ambiguities and Doubts did ariſe upon that Act; to avoid for the future thoſe Ambiguities and Doubts,

Raſtal's Stat. 31 Hen. VIII. cap. 6.

Perſons Religious to purchaſe, ſue and be ſued in all manner of Actions.

Raſtal's Stat. 33 Hen. VIII. cap. 29.

Doubts, another Act was made *ann.* 33. of the ſame King's Reign, explanatory of the former. Again,

The Statutes concerning Wills.

32 Hen. VIII. cap. 1.

X. Divers Doubts, Queſtions, and Ambiguities, having riſen and been moved, and grown by Diverſity of Opinions taken in and upon the Expoſition of the Letter of the Statute 32 *Hen.* VIII. *cap.* 1. ſhewing in what Caſes a Man might diſpoſe of his Lands by his laſt Will in Writing, *&c.* For a plain Declaration and Explanation thereof, it was enacted by the Statute 34 and 35 *Hen.* VIII. that the Meaning of the Letter of the ſame Statute, concerning ſuch Matters thereafter rehearſed, ſhould be by Authority of that Parliament enacted, taken, and expounded, judged, declared, and explained, in Manner and Form following, *&c.*

Pulton's Stat. 34 & 35 Hen. VIII. cap. 5.

4 Hen. VII. cap. 14.
32 Hen. VIII. cap. 36.

XI. Divers Doubts, Queſtions and Ambiguities having riſen upon the Diverſity of Interpretations and Expoundings of the Statutes of 4 *Hen.* VII. *cap.* 14. and 32 *Hen.* VIII. *cap.* 36. concerning Fines, *&c.*

Pulton's Stat. 34 & 35 Hen. VIII. cap. 22. *explaining the two former Statutes of Fines.*

In the Parliament 34 and 35 *Hen.* VIII. *cap.* 22. a farther Explanation was made thereof,

1. By the King,
2. The Lords Spiritual and Temporal,
3. And Commons,

in that Parliament aſſembled, and by Authority of the ſame.

Raſtal's Stat. 5 & 6 Ed. VI. cap. 13. *reciting the Statute of* 31 Hen. VIII. cap. 6.

XII. And laſtly, By an Act of Parliament made the 5th and 6th of *Edw.* VI. reciting the Statute of the 31ſt of *Hen.* VIII. *viz.* "For "and concerning the Enablement of Profeſſed and Religious Perſons to "purchaſe to them and to their Heirs in Fee Simple, Fee Tale, for "Term of Life, for Years or at Will, Manors, Lands, Tenements, "Rents, Annuities, and other Hereditaments and Things whatſoever: "And that they and every of them ſhould or might from thenceforth uſe "and exerciſe, receive, take, have and enjoy, all and every lawful Thing "and Things to be grown, fallen or happened to them or any of them, "after the ſame Deraignment or Departing out of Religion: In which "Act there is a Proviſo contained, *viz.* That none of the ſame Religious Perſons ſhould or might at any Time after the making of the "ſaid Act, be taken, deemed or adjudged for, or as Heir, or Heirs, or "inheritable to any Perſon or Perſons, to any Purpoſe, Reſpect, Conſtruction or Intent in the Law.

"But foraſmuch as, ſith the Time of the making of the ſaid Act, "there had been certain Ambiguities and Doubts grown and ariſen, "and hereafter are like to grow and ariſe upon the Expoſition of the "ſaid Act, Whether the ſaid then late Religious and profeſſed Perſons "could

" could or might be adjudged able to inherit, or to be inheritable as " Heir or Heirs, to any of his or their Anceſtor or Anceſtors, and to " have and enjoy all and every Thing and Things deſcended, grown, " fallen, or happened to them or any of them, after the ſaid Deraign- " ment or Departing out of Religion, Yea or No:

" Therefore for the full and plain Declaration thereof, it was Enact- " ed, Declared, and Expounded,

" By the Authority of this Parliament held *ann.* 5 & 6 *Edw.* VI.

" That all and every of the ſame late Religious and Profeſſed Perſon " or Perſons, ſhould and might by Authority of an Act then made, be " enabled to all Intents, Conſtructions and Purpoſes, at all Time and " Times, thereafter to be taken, deemed and adjudged as Heir or " Heirs, and inheritable to all and every their Anceſtor or Anceſtors; " and to have, challenge or enjoy, receive and take, all Manors, " Lands, Tenements and Hereditaments, and every other Thing or " Things, to them or any of them then fallen, come, grown, or deſcended " from any of their Anceſtors, by any manner of Ways, ſince the Time " of their ſeveral Deraignments or Departing out of their Religion, in " as ample and large Manner and Form and Condition, as if they ne- " ver had been profeſſed nor entered into Religion.

" The ſame Profeſſion or Religion, any Law, Cuſtom, or Uſe with- " in this Realm, to the contrary thereof in any wiſe notwithſtanding.

" Provided alway, and it was further enacted by the Authority afore- " ſaid, That none of the ſaid Religious Perſons ſhould, or might, by " Virtue of that Act, at any Time thereafter be taken, deemed or " judged for Heir or Heirs, or inheritable to any Perſon or Perſons, to " any Conſtruction or Intents in the Law, by reaſon of any former Right, " Title, Intereſt, Matter or Cauſe had, made, done, deſcended or " grown to any Reſpect or Purpoſe, before their ſaid ſeveral Deraign- " ments, or Departing out of their Religion; any thing before in this " Act, or in the ſaid former Act contained, to the contrary thereof " notwithſtanding."

Ambiguities and Doubts ariſing upon a Proviſo in a Statute 31 Hen. VIII. cap. 6. *Whether religious and profeſſed Perſons ſhould be adjudged inheritable to their Anceſtors, from the Time of Deraignment, or no?*

That Statute was explained by this of 5 and 6 Ed. VI. *and adjudged that they were inheritable to their Anceſtors only from the Time of their ſeveral Deraignments.*

And in *Butler* and *Baker*'s Caſe, in *Coke*'s 3d Report, it is declared for Law, That a Statute for Explanation ſhall not be conſtrued but according to the Letter: And the Reaſon thereof is given, " * becauſe " if any Expoſition ſhould be made againſt the direct Letter of an Ex- " poſition made by the Parliament, there would be no End of Ex- " pounding."

Coke's 3d Rep. *fol.* 31. a.

But now after all theſe Inſtances, though Multitudes more (did the Cauſe require it) might eaſily be quoted, if the Reader ſhould aſk me this croſs Queſtion:

* Car-ſi aſcun expoſition ſera fait encounter le direct letter del Expoſition fait per Parlement, ne unques ſera fine de expoſition.

What was the General Reaſon why our Parliaments were ſo extraordinarily watchful over the Judges, to limit and reſtrain them in Expounding Laws?

To this I anſwer, by giving him the Lord Chancellor *Elleſmere*'s Rule laid down for Conſtruction of Words, in that Grand Caſe of the *Poſt-nati* of *Scotland* in King *James* the Firſt's time.

The Rule is this:

The Speech of the Lord Chancellor Elleſmere *in the* Exchequer Chamber *before all the Judges of* England, *in the Caſe of the* Poſt-nati, P. 49.

Words are taken and conſtrued, ſaith he,

1. Sometimes by Extenſion;
2. Sometimes by Reſtriction;
3. Sometimes by Implication;
4. Sometimes a Disjunctive for a Copulative;
5. A Copulative for a Disjunctive;
6. The Preſent Tenſe for the Future;
7. The Future for the Preſent;
8. Sometimes by Equity, out of the Reach of the Words;
9. Sometimes Words taken in a contrary Senſe;
10. Sometimes Figuratively, as *Continens pro Contento*;
11. And many other like.

And of all theſe, he ſays, Examples be infinite, as well in the Civil Law, as Common Law.

Now any one that reads this, will eaſily judge, what the Scope and Conſequence of the Chancellor's Rule may be; and he may as eaſily diſcern how far it is capable of improving, to baffle and elude any Law whatſoever, and wreſt it from its genuine and native Senſe to what you pleaſe: And then he cannot marvel that our ancient Parliaments took ſuch extraordinary Care in framing and preſerving the Body of their Laws, to ſecure themſelves and their Poſterities from Slavery and Oppreſſion, and to maintain their native Rights, *viz.* To be ſubject only to the Laws made by their own Conſents, or to ſuch other, as by long Cuſtom of Time they had taken and uſed at their own Free Will and Liberty.

Videſis Stat. de anno 25 Hen. VIII. cap. 21.

But that ancient Fence they very well knew, would never be kept up, if they left it to the arbitrary Diſcretions and Dictates of the Judges of *Weſtminſter Hall:* And therefore, according to their Duty and Office, as being the Supreme Expounders, Declarers, Explainers, Interpreters, and Judges both of the Common and Statute Law, they in all Ages provided,

Nequid abſurdum, nequid illuſorium, nequid perniciosum Reipublicæ admittatur.

A Sophiſtical Argument in late Times. The Royaliſts Defence, *the Contents*, C. 4.

Away then with that apparently ſophiſtical Argument, which in late Times made ſo great a Noiſe and Buſtle in the World; namely, That the

the King, the Lords Houſe, and the Commons Houſe concurring, had not an unlimited Power to make Laws, it being in the Breaſt of the Judges of the Realm to determine which Acts of Parliament were binding, and which void; and to expound the Meaning of every Act [of Parliament.]

And that by referring this unto the Judges of the Realm, the People were better ſecured from an Arbitrary Power, than by attributing it to the Parliament:

A Notion which hath been artificially ſpread abroad and induſtriouſly improved: A Notion which is equally pernicious and injurious to all Kings and Parliaments, whoſe inherent Right it ever was by joint Conſent to alter, amend, explain, and interpret their own Statutes as they ſaw Cauſe, and according to publick Convenience.

But how could any thing of all that be done, if the Judges had ever been inveſted with ſuch a Power inſeparably united and annexed to their Perſons, *quatenus* Judges, to invalidate, diſannul, and declare but one Act of Parliament to be void? Since by the ſame Authority they might have declared Another to be ſo too; and by like Logick, All, without ever adjourning any Caſe *ad proximum Parliamentum propter Difficultatem*. And thus we ſee, *Uno abſurdo dato infinita ſequuntur*.

CHAP.

CHAP. VI.

Several Statutes of Feoffailes and Amendments were anciently made, as the Parliaments in their great Wiſdoms ſaw Cauſe, to enable and authorize the Judges *of* Weſtminſter Hall *to correct and amend ſeveral Errors and Defects in Records and Proceſs of Law, which before could not be done by any Judiciary Power veſted in them.*

Pulton's Stat. 14 Edw. III. cap. 6.

I. THE Statute of 14 *Edw.* III. authorizes the Judges haſtily to amend the Miſpriſions of Clerks, by miſtaking in Writing one Syllable or one Letter too much or too little.

Id. 9 Hen. V. cap. 4.

II. The Statute of 9 *Hen.* V. taking notice that there were Diverſity of Opinions upon the Statute of 14 *Edw.* III. therefore to put the Thing in more open Knowledge, it was declared and ordained,

By Authority of Parliament,

That the Juſtices before whom Default ſhould be found in any Records or Proceſs might amend them before Judgment.

Id. 4 Hen. VI. cap. 3.

III. The Statute of 4 *Hen.* VI. having recited both the ſaid Statutes, enacts,

That they ſhould hold Strength, Force, and Effect in every Record and Proceſs, as well after Judgment given upon a Verdict paſs'd, as upon a Matter in Law pleaded, as Statutes available and effectual in the Law, to endure for ever.

Id. 8 Hen. VI. cap. 12.

IV. In the 8th Year of *Hen.* VI. the King ordained and eſtabliſhed,

By Authority of Parliament,

No Judgment nor Record ſhall be reverſed nor avoided for any Writ, Return, Proceſs, &c. raſed or interlined.

That for Error aſſigned, or to be aſſigned, in any Record, Proceſs, or Warrant of Attorney, original Writ, or Judicial, Pannel, or Return in any Places of the ſame raſed or interlined, or in any Addition, Subtraction, or Diminution of Words, Letters, Titles, or Parcel of

of Letters found in any ſuch Record, Proceſs, Warrant of Attorney, Writ, Pannel, or Return; which Raſings, Interlinings, Addition, Subſtraction, or Diminution, at the Diſcretion of the King's Judges of the Courts and Places in which the ſaid Records or Proceſs by Writ of Error or otherwiſe be certified, do appear ſuſpected; no Judgment, nor Record, ſhould be reverſed nor annulled.

The Judges unable by this Statute to reform all Defects in Records by the Miſpriſion of the Clerk.

And that the King's Judges of the Courts and Places, in which any Record, Proceſs, Word, Plea, Warrant of Attorney, Writ, Pannel, or Return, which for the time ſhould be, ſhould have Power to examine,

1. Such Records, Proceſs, Words, Pleas, Warrants of Attorney, Writs, Pannels, or Returns, by them and their Clerks.

2. And to reform and amend (in Affirmance of the Judgments of ſuch Records and Proceſſes) all that which to them in their Diſcretion ſhould ſeem to be Miſpriſions of the Clerks in ſuch Records, Proceſſes, Word, Plea, Warrant of Attorney, Writ, Pannel and Return.

Defects in Proceſſes Criminal the Judges are not to amend.

3. Except Appeals, Indictments of Treaſon and of Felonies, and the Outlawries of the ſame.

And the Subſtance of the proper Names, Sur-names, and Additions, left out in original Writs, and Writs of Exigent, according to the Statute another time made, *viz.* the Firſt Year of King *Henry* V. and in other Writs containing Proclamation; ſo that by ſuch Miſpriſion of the Clerk, no Judgment ſhould be reverſed nor annulled.

Variance alledged between a Record and the Certificate thereof, the Judges had Power to amend by Authority of this Act.

4. And if any Record, Proceſs, Writ, Warrant of Attorney, Return or Pannel, ſhould be certified defective, otherwiſe than according to the Writing which thereof ſhould remain in the Treaſury, Courts or Places from whence they are certified, the Parties in Affirmance of the Judgments of ſuch Records and Proceſs, ſhould have Advantage to alledge that the ſame Writing was variant from the ſaid Certificate, and that being found and certified, the ſame Variance was to be by the ſaid Judges reformed and amended, according to the firſt Writing.

Pulton's Stat. 8 Hen. VI. cap. 15.

The Juſtices of Weſtminſter Hall *enabled in certain Caſes to amend Defaults in Records and Proceſſes.*

V. And in the ſame Parliament, another Act was made, whereby it was likewiſe ordained and eſtabliſhed, That the King's Juſtices before whom any Miſpriſion or Default ſhould be found, whether in any Records and Proceſſes, which then were or ſhould be depending before them, as well by way of Error as otherwiſe, or in the Returns of the ſame then made, or to be made by Sheriffs, Coroners, Bailiffs of Franchiſes, or any other, by Miſpriſion of the Clerks, or any of the ſaid Courts of the King, or by Miſpriſion of the Sheriffs, Under-Sheriffs, Coroners, their Clerks, or other Officers Clerks, or other Miniſters whatſoever, in writing one Letter or one Syllable too much or too little, ſhould have Power to amend ſuch Defaults and Miſpri-

ſions, according to their Diſcretion; and by Examination thereof by the ſaid Juſtices to be taken, where they ſhould think needful.

Records and Proceſſes in Wales *excepted out of this Act.*

Provided that That Statute ſhould not extend to Records and Proceſſes in the Parts of *Wales*, nor to the Proceſſes and Records of Felonies and Treaſons, and the Dependencies thereof.

Raſtal's Stat. 32 Hen. VIII. cap. 30.

VI. And in a Parliament held in 32 *Hen.* VIII. a farther Act was made, which ſays, Foraſmuch as the Party Plaintiffs and Demandants in all manner of Actions and Suits, as well Real as Perſonal, at the Common Law of this Realm, before that Time had been greatly delayed and hindered in their Suits and Demands, by reaſon of the craftſubtle and negligent Pleadings of the Plaintiffs or Demandants, Defendants or Tenants, where any Action or Demand had been ſued, had or made, as well in miniſtring of their Declarations and Bars, as alſo in their Replications, Rejoinders, Rebutters, Joining of Iſſues, and other Pleadings; to the great Hurt, Delay and Hinderance of the ſaid Plaintiffs or Demandants, or to the Vexation of the Defendants or Tenants.

The Parliament takes notice of the ſeveral Inconveniencies which had happened by Delays in Suits.

Inſomuch that when the Iſſues joined in the ſame Actions between the Parties to the ſame, had been tried and found by the Verdict of Twelve or more indifferent Perſons, for the ſaid Plaintiffs or Demandants, or for the Tenants or Defendants, and the Juſtices ready to give Judgment for the ſaid Parties, for whom the ſaid Iſſue was found: The ſame Parties had been compelled, by the Courſe and Order of the Common Law of this Realm afore that Time, to re-plead, and the ſaid Verdicts ſo given as is afore rehearſed, to be taken as void and of none effect:

The Courſe of the Common Law not to be altered but by Parliament.

1. Sometimes becauſe the Iſſues had been misjoined and jeofaile.

2. And ſometimes by taking Advantage of the Party's own Miſpleading.

3. Or in the purſuing, miſconveying, or diſcontinuing of Proceſs of any of the Parties.

4. And for divers other Cauſes, the which is thought as well a great Slander to the ſaid Common Law of this Realm, and to the Miniſters of the ſame; as alſo a plain Delay and Hinderance unto the ſaid Parties, in that they ſhould not have their Judgments when the Iſſue had been found and tried, as is aforeſaid, to their great Coſts and Charges:

The conſtituent Parts of the Legiſlative Power.

It was therefore enacted,

1. By the King,

2. By the Lords Spiritual and Temporal,

3. And the Commons,

in that Parliament aſſembled, and by the Authority of the ſame, That from thenceforth, if any Iſſue ſhould be tried by the Oath of Twelve or more

more indifferent Men, for the Party, Plaintiff or Demandant; or for the Party, Tenant, or Defendant, in any manner of Action or Suit at the Common Law of this Realm, in any of the King's Courts of Records, then the Juſtice and Juſtices, by whom Judgment thereof ought to be given, ſhall proceed and give Judgment in the ſame, any Miſpleading, lack of Colour, inſufficient Pleading or Jeofaile, any Miſcontinuance or Diſcontinuance, or miſconveying of Proceſs, misjoining of the Iſſue, lack of Warrant of Attorney of the Party againſt whom the ſame Iſſue ſhould happen to be tried, or any other Default or Negligence of any of the Parties, their Counſellor, or Attorneys, had or made to the contrary notwithſtanding.

Ordered by Parliament, that after Iſſue tried, Judgment ſhould be given, notwithſtanding any Jeofaile, or Miſpleading.

And the ſaid Judgments thereof, ſo to be had and given, ſhould ſtand in full Strength and Force to all Intents and Purpoſes, according to the ſaid Verdict, without any Reverſal or Undoing of the ſame, by Writ of Error, or of falſe Judgment, in like Form, as though no ſuch Default of Negligence had never been had or committed.

This Act was to endure till the laſt Day of the next Parliament.

But in another Parliament held 2d and 3d *Edward* VI. it was enacted and eſtabliſhed, Pulton's Stat. 2 & 3 Ed. VI. cap. 32.

By the King, the Lords Spiritual and Temporal, and Commons,

That this Statute, and the Statutes of 32 *Henry* VIII. *cap.* 30. concerning Jeofails, and 35 *Henry* VIII. *cap.* 6. directing what kind of Jurors ſhould appear upon a *Niſi Prius*, and for granting *Tales de Circumſtantibus* between Party and Party, ſhould be perpetual.

The Parliament makes Statutes for a certain Time, to be perpetual.

But to go on.

VII. In the Parliament of the 18th of Queen *Elizabeth*, it was enacted, Pulton's Stat. 18 Eliz. cap. 13.

1. By the Queen,
2. The Lords Spiritual and Temporal,
3. And the Commons,

The Parliament adjudges in what Caſes Judgment after Verdict ſhall not be ſtayed.

That after Verdict given in any Court of Record, there ſhould be no Stay of Judgment, or reverſing thereof, by reaſon of any Default in Form, or lack of Form, touching falſe *Latin*, or Variance from the Regiſter, or other Defaults in Form, in any Writ original or judicial, Count, Declaration, Plaint, Bill, Suite, or Demand, or by reaſon of any imperfect or inſufficient Return of any Sheriff or other Officer, or for want of any Warrant of Attorney, or by Reaſon of any manner of Default in Proceſs, upon or after any Aid, Prier, or Voucher, nor any ſuch Recorder or Judgment, after Verdict to be given thereafter, ſhould be reverſed for any Defects or Cauſes aforeſaid, any Law, Statute, or Uſage to the contrary notwithſtanding.

NonObſtantes *properly belonging to Parliaments.*

Provided always, and it was further enacted,

By Authority aforeſaid,

That

To what Things the Parliament provides that this Statute ſhall not extend.

That that Act, or any thing therein contained, ſhould not extend to any Writ, Declaration, or Suit of Appeal of Felony, nor to any Indictment or Preſentment of Felony, Murder, Treaſon, or other Matter, nor to any Proceſs upon any of them, nor to any Writ, Bill, Action, or Information, upon any popular or penal Statute, any thing aforeſaid to the contrary notwithſtanding.

Pulton's Stat. 21 James I. cap. 13. *An Act for the farther Reformation of Jeofailes.*

VIII. But although theſe were good and profitable Acts, yet there fell out many things which were not provided for, or remedied by theſe Laws; and therefore another Act was made *anno* 21 *James* I. for reformation of the Defects of the Statutes of 32 *Henry* VIII. and 18 *Elizabeth*, wherein it was enacted,

Defects in former Statutes remedied, and Proceedings in the Courts of Weſtminſter Hall *in Point of Practice, reformed by Parliament.*

By Authority of Parliament,

That after Verdict given in any Court of Record, the Judgment thereupon ſhould not be ſtayed or reverſed, for any Variance in Form only between the original Writ, or Bill, and the Declaration, Plaint, or Demand; or for lack of an Averment of the Party's Life, or Lives, ſo as it were proved he, or they, were in Life; or for that the *Venire Facias*, *Habeas Corpus*, or *Diſtringas*, was awarded to a wrong Officer upon any ſufficient Suggeſtion; or that the *Viſne* was in ſome Part miſawarded, or ſued out of more or fewer Places than it ought to be, ſo as ſome one Place be right named; or for miſnaming any of the Jurors, either in the Surname or Addition, in any of the Writs or Returns thereof, ſo as *Conſtat de Perſona*; or for Want of a Return of any of the ſaid Writs, ſo as a Pannel was returned, and annexed thereunto; or for that the Officer's Name was not ſet to the Return, ſo as it appeared by Proof, that the Writ was returned by him; or by reaſon that the Plantiff in an *Ejectione firmæ*, or in any perſonal Action, being under Age, did appear by Attorney, and the Verdict paſs for him.

Stat. 16 & 17 Car. II. c. 8. *An Act to prevent Arreſts of Judgment, and ſuperſeding Executions.*

IX. And laſtly, by the Statute of 16 and 17 *Charles* II. * it was enacted, that after a Verdict, Judgment ſhould not be ſtayed nor reverſed in the King's Courts of Record at *Weſtminſter*, Courts of Record in the Counties Palatine of *Lancaſter*, *Cheſter*, or *Durham*, or of the great Seſſions in any of the Twelve Shires of *Wales*, for want of Form, or for want of Pledges; for not producing any Deed or Letters of Adminiſtration, for want of *Vi & Armis*, or *Contra Pacem*, or for mi-

* *This Act ſo lately made doth plainly ſhew, that the Judges did not think it ſafe or legal, without the Authority of this Law, to give Judgment after Verdict in ſuch Proceedings, where the Omiſſions or Miſtakes were that are mentioned in this Statute, though moſt of the Precedents and Forms of Declarations and Judgments as to* Vi & Armis contra pacem miſericordia capiatur, *and alledging the bringing into Court any Bond, Bill, Indenture, or any other Deed, Letters Teſtamentary, or Letters of Adminiſtration, are ſo plain, that the Omiſſions, Neglects, and Miſallegations in ſuch Proceedings, were looked upon and ſuggeſted to be only the Fault of the Clerk that was concerned in the drawing, copying, or entering thereof.*

ſtaking

ſtaking the Chriſtian Name, or Surname, of either Party, Sum of Money, Day, Month, or Year, being rightly named in any Record, whereto the Defendant might have demurred, nor for want of *hoc paratus eſt verificare*, or *hoc paratus eſt verificare per Recordum*, or *prout patet per Recordum*, ſo the Cauſe were tried by a Jury of the County or Place where the Action was laid.

Nor ſhould any Judgment after Verdict, Confeſſion, by *Cognovit Actionem*, or *Relicta Verificatione*, be reſerved for want of a *Miſrecordia*, or a *Capiatur*e, or becauſe one is put for the other; nor for that *ideo conceſſum eſt per Curiam*, is entered for *ideo conſideratum eſt*; nor for that the Increaſe of Coſts after a Verdict in an Action, or upon a *non ſuit in Replevin*, were not entred to be at the Requeſt of the Party, for whom the Judgment was given, nor by reaſon that the Coſts in any Judgment were not entered to be by Conſent of the Plaintiff; but that all ſuch Omiſſions, Variances, and all other Matters of like Nature, not being againſt the Rights of the Matter of the Suit, nor whereby the Iſſue of Tryal ſhould be altered, ſhould be amended by the Juſtices or other Judges of the Courts where ſuch Judgments were or ſhould be given.

Which Act was to continue for three Years, and to the End of the next Seſſion of Parliament after the Expiration of the ſaid three Years, and no longer; but by an Act of the 22d and 23d of that King, it was made perpetual. Stat. 22 & 23 Car. II. c. 4. *The aforeſaid Statute was made perpetual.*

Before we come to make our Obſervables upon what hath been ſaid, I will commend to the Reader's Conſideration

A general REMARK, *viz.*

That there are very many Statutes, which have from Age to Age been made, whereby new Powers have been given to the Judges in Matters of Judicature, and alſo old ones enlarged; ſo that in theſe Reſpects the Judges may, without any Derogation or Diminution to their Office, be called *Judices Parliamentarii*; becauſe they could only exerciſe and execute ſuch Powers by Authority of Parliament, and not by any Authority given them at the Common Law; which clearly proves this Propoſition, *The Power of Judges from Time to Time reſtrained or enlarged, according to the Wiſdom of Parliaments.*

That the Judges were not to be directed or governed by their own Wills and Diſcretions, but by the known Laws and Statutes of the Realm, which were at all Times ſtrictly and cloſely to be obſerved by them all. PROPOSITION.

But to digreſs no further:

Theſe Statutes of Jeofailes, being rightly underſtood, do clearly evince to all Mankind, that will hearken to Truth, and be governed by it, *Several Concluſions from the whole which hath been ſaid in this Chapter.*

I. That

I. That Parliaments were never bound up by any Proceedings, Opinions, or Reſolutions of the Judges, becauſe they corrected, redreſſed, and remedied, by their own ſuperior Authority, the ſeveral Miſchiefs which happened by reaſon of crafty, ſubtil, and negligent Pleadings, which were a great Slander to the Common Law, and a great Hurt, Delay, Hinderance, Trouble, and Vexation to the Subjects of the Realm.

II. That Parliaments did, as they in their great Wiſdom ſaw Cauſe, from Time to Time enable and authorize the Judges to examine, reform, and amend Errors, Defects, and Defaults in Omiſſions, Additions, Subſtractions or Diminutions,

1. Of Words,
2. Syllables,
3. Titles,
4. Letters, or
5. Parcel of Letters

in Records, and Proceſs of Law, according to the Diſcretion of the Judges, which before could not be done by any judiciary Power inveſted in them; and in ſhort, I ſuppoſe I ſhall not be thought over haſty if I ſay, that there cannot well be produced a more noble, concluding, yea invincible Argument, to prove the ancient Juriſdiction of the moſt High Court of Parliament, over the inferior Courts of *Weſtminſter Hall*, than may be brought and maintained, from the ſeveral Statutes of Jeofailes and Amendments, continued down even till this preſent Age.

The ancient Juriſdiction of the High Court of Parliament over all the inferior Courts in the Kingdom, in Matters both of Fact and Law, declared and proved by theſe foregoing Statutes.

And laſtly, it may be much wondered at, that this Argument ſhould not long ago have been taken Notice of, and publickly aſſerted by ſome Body, to confute and confound thoſe Swarms of inſolent, ſcandalous, ſeditious, and malicious Pamphlets, and Paraſitical Opinions, which of late have made the eſtabliſhed Laws of the Land precarious, and the Pillars of our famous *Engliſh* Government by King, Lords, and Commons, terribly to ſhake and totter, by ſubjecting Parliaments to the Judges in *Weſtminſter Hall*.

CHAP.

CHAP. VII.

Of the Original of Non Obſtantes, *and how they came into the Courts of Juſtice: And that the Reverend Judges of* Weſtminſter Hall *did not in former Times imagine, that by Virtue of their expounding Power, they could inveſt ſuch a Prerogative in the Crown, as that the King, by a* Non Obſtante *put into his Grants, might ſuſpend General Statutes, and diſpence with an Act of Parliament, againſt the manifeſt Senſe and Words thereof, expreſly declaring, That all* Non Obſtantes *in that particular Caſe ſhould be void, and of no Value.*

NOW that I may be the better enabled to clear the Matter both of Fact and Law, laid down in this general Propoſition, I ſhall conſider,

SECT. I. When *Non Obſtantes* came firſt into *England*, and from whence they were brought.

SECT. II. About what Time they were introduced into our Courts of Juſtice; and the Manner of their Introduction.

SECT. III. Whether the Judges in former Ages took the Law to be, that the King had ſuch an inherent Power veſted in him, as that by a *Non Obſtante* put into his Grants, he might ſuſpend and diſpenſe with general Acts of Parliament, made *pro Bono Publico?*

SECT. IV. More particularly whether the King by his Prerogative could diſpenſe with the Statute of the 23[d] of *Henry* VI. which enacted,

enacted, That no Man ſhould continue Sheriff, or Under-Sheriff, longer than for a Year, and that all Patents which ſhould be after made of theſe Offices ſhould be void, any Clauſe or Word of *Non Obſtantes*, in any wiſe put, or to be put into ſuch Patents notwithſtanding. And then,

SECT. V. I ſhall conſider the Caſe in the *Year Book*, *ann.* 2 *Hen.* VII. touching that Matter; and endeavour to prove by ſeveral Arguments and Reaſons, that that Caſe, as repreſented and underſtood in later Times, could never be good Law.

And now I will begin.

SECT. I.

When Non Obſtantes *came firſt into* England, *and from whence they were brought.*

Mat. Par. *fol.* 698. *l.* 40. Annales Monaſt. Burton, *fol.* 306. *Complaints in Parliament*, 29 Hen. III. *againſt* Non Obſtantes.

ANNO Domini 1245, which was in the 29th Year of *Henry* III. a Parliament being called at *Weſtminſter*, freſh Complaints were made therein againſt the inſatiable Avarice, the injurious Encroachments, and unlawful Rapines made by the Court of *Rome* upon both Church and State.

Whereupon it was agreed by them, that for the Reverence due to the Apoſtolic See, they ſhould again ſupplicate the Pope, by Letters, to remove the intolerable Grievances, and importable Yoke, under which the whole Kingdom then miſerably groaned.

And this they did by the following Letter;

Literæ Univerſitatis Angliæ ad Papam. Idem *fol.* 700. *lib.* 51. Annales Monaſt. Burton, *fol.* 309. *The Parliament's Remonſtrance to the Pope.*

Sanctiſſimo, &c. Devoti filii ſui Comes Cornubiæ, Richardus Simon de Monte Forti Comes Legreceſtriæ, W. de Ferrariis Comes Derbeiæ, H. de Boun Comes Hertfordiæ & Eſſexiæ, R. le Bigod Comes Northfolkiæ, R. Comes Gloverniæ & Herefordiæ, R. Comes Wintoniæ, W. Comes Albemarliæ, H. Comes Oxonienſis, & alii totius Regni Angliæ,

1. *Barones, Proceres,*
2. *Magnates, & Nobiles Portuum Maris, Habitatores, nec non*
3. *Clerus & Populus univerſus,*

ſalutem, & debitem tanto Pontifici in omnibus Reverentiam.

" The Mother-Church ought ſo to cheriſh her Sons, gathering them " under her Wings, that her Sons do not degenerate from their Duty " to their Mother, but that if Need be, they may betake themſelves " to

" to Force on her Behalf, and putting on Armour and a Shield, may " expoſe themſelves to all Dangers for her Defence, out of whoſe Breaſts " they ſuck the Milk of Comfort, and upon whoſe Duggs of Piety they " hang.

" For a Mother ought to remember the Sons of her Womb, leſt, if " ſhe do otherwiſe, withdrawing the Food of her Milk, ſhe might ſeem " to play the Step-Mother.

" A Father, in like manner, if he withdraw his fatherly Love from " his Children, deſerves no longer the Name of a Father, but of a " Step-Father; for that he accounts his own Children no otherwiſe " than Baſtards, or Step-Children.

" Wherefore, Reverend Father, the Chariot of *Iſrael*, and the " Horſeman thereof, we have Recourſe with Confidence to the Sanctu- " ary of your Piety, crying after you, imploring likewiſe humbly and " devoutly, that in hope of a Reward from God, you will vouchſafe " mercifully to hear our Voices that cry after you, and that you will " apply a healing Remedy to the Grievances, Injuries, and Oppreſſi- " ons, in many-fold-wiſe done to, and laid upon the Realm of *Eng-* " *land*, and our Lord the King.

" Otherwiſe Scandals will unavoidably come, through the inſuffer- " able Clamour of the People, both to the King, and to your Holi- " neſs. For unleſs the King and Kingdom be ſpeedily freed from the " Grievances inflicted upon them and it, it will behoove us to oppoſe " ourſelves (as a Wall) for the King's Houſe, and the Kingdom's Li- " berty, which indeed we have hitherto forborn to do, out of Reverence " to the Apoſtolic See, nor after the Return of our Meſſengers, which for " this Cauſe we have diſpatched to the Apoſtolic See, can we diſſemble " any longer, but muſt relieve both the Clergy and the People of the " Kingdom of *England*, who will in no Sort endure ſuch Things; " which unleſs they are ſpeedily amended by your Holineſs, know " for certain, that there is juſt Cauſe of Fear, leſt ſuch a Miſchief " befal both the Church of *Rome*, and our Lord the King, as cannot " eaſily be redreſs'd; which God forbid."

Now one of the Articles of the Grievances was this,

Item gravatur Regnum Angliæ ex multiplici adventu illius infamis Nuncii, [*illud*] Non Obſtante, *per quod*

1. *Juramenti Religio*,
2. *Conſuetudines antiquæ*,
3. *Scripturarum Vigor*,
4. *Conceſſionum Authoritas*,
5. *Statuta, Jura, & Privilegia*,

debilitantur, & evaneſcunt.

One particular Article of the Parliament's Remonſtrance of Grievances, was this of Non Obſtantes.

Per quod infiniti de Regno Angliæ oppreſſi ſunt graviter, & afflicti: Nec ſe dominus Papa verſus Regnum Angliæ, in plenitudine poteſtatis ſuæ revocanda, ita curialiter vel moderate ſe gerit, prout procuratoribus Regni ore tenus dederat in promiſſis.

Bp. Groſted's *Judgmennt concerning* Non Obſtantes, *in his Letter to the Pope.*

Beſides *Robert Groſted*, the moſt pious and famous Biſhop of *Lincoln*, in a Letter that he ſent to the Pope in the Year 1253, which was in the 37th of *Henry* III. complains bitterly of *Non Obſtantes*. I pray hear him.

Epiſtola miſſa Papæ Innocen. IV. ab Epiſcopo Lincoln. Matt. Paris, *fol.* 870, 871.

Non eſt igitur prædictæ Literæ tenor Apoſtolicæ Sanctitati conſonus, ſed abſonus plurimum & diſcors.

Primo, quia de illius Literæ, & ei conſimilium longe lateque diſperſarum, ſuper accumulato Non Obſtante, *nec ex legis naturalis obſervandæ neceſſitate inducto, ſcatet cateclyſmus inconſtantiæ, audaciæ, & procacitatis, inverecundiæ, mentiendi, fallendi, diffidenter alicui credendi vel fidem adhibendi; & ex his conſequentium vitiorum, quorum non eſt numerus, Chriſtianæ Religionis puritatem & ſocialis converſationis hominum tranquillitatem conmovens & perturbans.*

Præterea, poſt peccatum Luciferi, *quod idem erit in fine temporum ipſius filii perditionis* Antichriſti, *quem interficiet Dominus ſpiritu oris ſui, non eſt, nec eſſe poteſt alterum genus peccati tam adverſum & contrarium Apoſtolorum doctrinæ & Evangelicæ, & ipſi Domino Jeſu Chriſto tam odibile, deteſtabile, & tam abominabile, quam animas Curæ paſtoralis officii & miniſterii defraudatione mortificare & perdere,* i. e.

"The Tenor of the ſaid Letter is not conſonant to the Sanctity of "the Apoſtolic See, but very diſſonant from, and diſagreeing there-"with.

"*Firſt*, Becauſe by the accumulated *Non Obſtantes*, in that Letter, "and in others diſperſed far and wide, which *Non Obſtantes* are not "introduced through any Neceſſity of keeping the Law of Nature, "there abounds a Deluge of Inconſtancy, Impudence, Saucineſs, Im-"modeſty, Lying, Cheating, a diffident Belief of every Thing, and "innumerable Vices purſuant to theſe, which corrupt the Purity of "the Chriſtian Religion, and diſturb the Peace of Human Society.

"Beſides, next to the Sin of *Lucifer*, which will be recommitted "in the End of Time by *Antichriſt*, that Son of Perdition, whom the "Lord ſhall ſlay with the Spirit of his Mouth, there neither is nor can "be any other Sort of Sin, ſo contrary and repugnant to the Evange-"lical Doctrine of the Apoſtles, nor ſo odious, deteſtable, and abomi-"nable in the Eyes of our Lord *Jeſus Chriſt* himſelf, as to murder "and deſtroy Mens Souls by defrauding them of the Care of the Pa-"ſtoral Office and Miniſtry."

From

From the Remonſtrance therefore of the Parliament to the Pope, it is viſible to the World,

Deductions from the Parliament's Remonſtrance to the Pope.

1. That both the Parliament and the whole Kingdom were much aggrieved with that infamous Meſſenger *Non Obſtante*.

2. That the ſolemn Judgment of the Parliament was, that thereby the Sacredneſs of an Oath, ancient Cuſtoms, the Force and Effect of all Writings, the Authority of Conceſſions, Statutes, Laws, and Privileges, became invalid, and vaniſh'd into Smoak.

3. And laſtly, for a full Anſwer to that Part of the Queſtion, *viz.* when *Non Obſtantes* came firſt into *England?* it is evident it was not long before the Time of this Parliament held *ann.* 29 *Henry* III. And for the other Part of the Queſtion, *viz.* From whence were they brought? it is as evident they came from the Court of *Rome*, and from thence only, having no Foundation at all in the ancient Laws of *England*.

SECT. II.

About what Time were Non Obſtantes *introduced into our Courts of Juſtice, and the Manner of their Introduction?*

Matthew Paris, ad annum 1250, which was in the 34th and 35th of *Henry* III. tells us,

Concedit Rex [H. III.] novas Chartas Abbati Weſtm. Matt. Paris, fol. 783. l. 20.

The firſt Inſtance of the Time when NonObſtantes *were introduced into the Courts of Juſtice.*

That the King granted a Charter to the Abbot of *Weſtminſter*, contrary to the Charters of his Anceſtors, and thoſe who had reigned in *England* before the Conqueſt, *in læſionem fidei ſuæ, & juramenti primitivi*, to the Damage and manifeſt Injury of the Church of *St. Alban's*, in a very ancient Town, called for its Antiquity *Aldenham*, whence it might ſeem probable, *he ſays*, that the ſaid Town was granted to *Alban*, the moſt ancient Proto-martyr of the *Engliſh*, though all Evidences had been ſilent in the Matter.

Moreover, that King granted by another Charter to a certain Tenant, by Knight-Service holding *in Capite* of the Church of *St. Alban's*, by Name *Jeffry*, who had married the Siſter of *John Manſell*, the King's Chaplain, free Warren in the Grounds of *St. Alban's*, and near the Town, *contrà antiquas Eccleſiæ illius Libertates, & Chartas obtentas à piis priſtinis Regibus & continue uſitatas*; nay and contrary to a Charter granted by King *Henry* himſelf.

Now when *Matthew Paris* argued this Matter with the King, undauntedly the King anſwered, *Nonne Papa facit ſimiliter, ſubjungens in Literis ſuis manifeſte*, Non Obſtante *aliquo privilegio vel indulgentia?*

The

The Second Inſtance.

The ſame Hiſtorian gives us a ſecond Account touching *Non Obſtantes:*

Deteſtabilis adjectio, *Non Obſtante*, in curias laicorum derivatur. Mat. Par. fol. 810. lib. 48.

In thoſe Days, ſays he, *viz. ad annum* 1251. when a Suit at Law was commenced betwixt *Silveſter* Biſhop of *Carliſle*, and a certain Baron, for a Manor which the Baron had ſold to *Walter* the Biſhop's Predeceſſor, and would have reſumed it again; *Silveſter* the Biſhop anſwered prudently for himſelf, for his Adverſary (though his Procurators were preſent) was at that time beyond Sea.

The Biſhop therefore obtained the King's Letters of Protection, during the Abſence of the Baron, and ſo returned Home joyfully.

But the adverſe Party, though keeping ſilence then, yet when the Biſhop was afar off, obtained other Letters from the King, That *Non Obſtante* the former Letters of Protection, the Barons Cauſe ſhould go on, *Quod factum fuiſſe non creditur ſine muneris opitulatione.* And he farther tells us, That ſuch Letters or Writs were frequently iſſued out, *in quibus inſerta eſt hæc deteſtabilis adjectio*, Non Obſtante priore mandato, or, Non Obſtante antiqua libertate, *procedat negotium.*

Beſides this, there crept in *ſiniſtra interpretatio in chartis facta:* for Example, If the Words ran thus, "We grant this or that Liberty "to ſuch Religious Houſe," and the Houſe was expreſsly named, and then followed, "and to all the Manors thereunto belonging;" If the Manors themſelves were not diſtinctly ſpecified, That Clauſe was conſtrued to be of none effect.

But the Monk ſaith, That ſuch Conſtruction was manifeſtly diſſonant to Reaſon and all Juſtice; nay, and contrary to the Rule of Logick, the infallible Searcher out of Truth.

Quod cum comperiſſet quidam vir diſcretus tunc Juſticiarius, ſcilicet Rogerus de Turkeby, ab alto ducens ſuſpiria, de prædictæ adjectionis appoſitione dixit, Heu! heu! nos ut quid dies expectavimus! Ecce jam civilis curia exemplo eccleſiaſticæ coinquinatur, & à ſulphureo fonte rivulus intoxicatur.

The Third Inſtance.

Give me leave to add a third Inſtance, touching the ſame Subject:

Mat. Par. fol. 854. lib. 10.

Anno 1252. and in the 37th Year of *Henry* III. the Maſter of the Hoſpital of St. *John of Jeruſalem* in *Clerkenwell*, waiting patiently for a proper Opportunity of ſpeaking with that King, concerning a notorious Injury done to him, opened his Complaint, and ſhewed ſome Charters of Protection granted by former Kings, and by the King himſelf: To whom the King with a loud Voice replied in Anger with a great Oath, "You, and the *Templers*, have ſo many Liberties and "Charters, that your ſuperfluous Poſſeſſions make you proud, and "your Pride makes ye mad: Thoſe Things therefore ought prudently

" to be revoked which were imprudently granted, and adviſedly to be " reſumed which were unadviſedly ſquandered away."

And added,

Nonne dominus Papa quandoque, imo multoties factum ſuum revocat? Nonne appoſito hoc repagulo, Non Obſtante, *chartas caſſat præconceſſas? Sic & ego infringam hanc, & alias chartas, quas prædeceſſores mei & ego temere conceſſimus.* i. e.

" Does not your Lord the Pope ſometimes, yea often revoke his own " Acts? Does he not, by inſerting this Barrier of a *Non Obſtante,* make " void his former Grants? So will I infringe this and other Charters, " which my Predeceſſors and my ſelf have raſhly granted."

The Maſter of the Hoſpital, whom they call Prior, anſwered briſkly with an erected Countenance: " What is that that you ſay, my Liege? " God forbid that ſo unſeemly and abſurd a Word ſhould come out of " your Mouth: *Quamdiu juſticiam obſervas, Rex eſſe poteris; & quam " cito hanc infregeris, Rex eſſe deſines."* *Ad quod Rex minus incircumſpecte reſpondit,* " Ha! what do you mean by that? *Vos Anglici, vultiſ- " ne me, ſicut quodnam patrem meum, a regno præcipitare, atque necare " præcipitatum.*

Verba Mag Hoſp. Hier. Rege (H. III. habita. Mat. Par. fol. 854.

Theſe three Inſtances do fully reſolve the foregoing Queſtion: for they prove,

Deductions from the foregoing Inſtances.

1. That the Time, when *Non Obſtantes* were introduced into our Courts of Juſtice, was towards the latter End of *Henry* the Third's Reign, and not before.

2. They diſcover the Manner how *Non Obſtantes* were introduced into thoſe Courts.

3. And evince that the Uſe of *Non obſtantes* was only in ſuch Caſes, wherein the particular Charters of the King were concerned; and not upon Statutes and publick Acts of Parliament.

4. And for the Cloſe of all, my Authorities clearly prove, beyond all Contradiction, that *Non Obſtantes* were not at the Common Law, nor can they pretend to be warranted by Preſcription, unleſs it can be made out, that *Henry* III. was before *Richard* I. his Uncle:

Since no Common Lawyer can deny without betraying a groſs Ignorance in his Profeſſion, That the Time of General Preſcription muſt be from before the firſt Year of *Richard* I. Brother to King *John*, who was Father to *Henry* III.

See Rolls Abridgment, *tit.* Preſcription. *fol.* 268, 269. Que ſera bon preſcription en reſpect del temps.

To conclude;

Concluſion.

How then is it poſſible to make out, That the diſpenſing Power by *Non Obſtantes* was an ancient Remain of the Sovereign Power and Prerogative of the Kings of *England*, which never yet was taken from them, nor can be.

SECT. III.

Whether the Judges in former Ages took the Law to be, That the King had ſuch an inherent Power inveſted in him, as by a Non Obſtante *put into his Grants, to ſuſpend general Acts of Parliament.*

IN the handling of this Queſtion, I would give the World a vaſt Collection of Authorities, which even to Demonſtration prove, That the Judges in former Ages, neither did nor could ſuppoſe that there ever had been any ſuch Prerogative Law exerciſed in *England:* But that would tempt the Patience of the Reader, and therefore I will avoid ſuch a Hazard, and confine myſelf to certain Parliamentary Proceedings touching *Proviſions* from *Rome*; and from thence draw ſome natural Inferences and Concluſions, to determinate the whole Matter.

And becauſe the Authorities I advance are moſt of them in old *French*, I have for the greater Eaſe, as well as better Underſtanding of the Reader, rendered them in *Engliſh*, and that too at length to prevent all Cavillation.

The Firſt Authority.

Rot. Parliam. 17 Edw. III. N° 59. inter Petitiones Communitat.

In a Parliament held in the 17th Year of *Edward* III. the Commons remonſtrate to him, "That foraſmuch as the Aliens do hold ſo many "Benefices in this Land, whereby the Alms are withdrawn, which "ought to be made, and the Treaſure of this Land is much carried "away in Maintainance of your Enemies, and the Secrets of this Land "are diſcovered, and your Liege Clerks otherwiſe ſufficient are not advanced by reaſon of ſuch:

"And for that many Cardinals are of late made, whereof the *Pope* "by his Bulls hath granted to two of them Benefices in this Land, to "the Value of ſix thouſand Marks, and Tax, in ſo general and covert "a Manner, that the Sum will exceed ten thouſand Marks before the "Gift be accepted, if the Thing accepted be ſo ſuffered.

"And the Commons have underſtood, that one of the two aforeſaid "Cardinals, that is to ſay, Cardinal *de Peragorſs*, is the fierceſt Enemy that is in the Court, and moſt contrary to the Affairs of our "Lord the King:

"And ſo from one Year to another, in the Length of Time, by ſuch "Grants the Land will be full of Aliens, which may be to the great "Peril of the Land:

"And ſcarce any Clerk by that means, being the Son of a great "Lord, nor other, will find any Benefices to be promoted to: And

"that

" that to the great Damage of the King and of the Commons, by rea-
" ſon of ſuch Reſervations and Proviſions:

" Whereof the Commons pray Remedy.

" For the ſaid Commons, *Ne le poit ne le voet plus endurer, i. e.*
" Neither will nor can any longer endure it; becauſe that all the Foun-
" dations and the Advowſons of Archbiſhopricks, Biſhopricks, Abbeys,
" Priories, Parochial Churches, and all the Spiritual Rents of the Land,
" are of the Foundations of Kings, Earls, Barons, and of the Com-
" mons.

" Therefore may it pleaſe our Lord the King, to write to the *Pope*,
" under the Great Seal, and under the Seals of the Peers and Great
" Men of the Land; and to ſend to the Pope, that he will ſurceaſe
" this Charge, and to repeal what is done.

" And if any of the Peers and Great Men will not ſeal it, the Com-
" mons will look upon him or them as ſuch that are not deſirous of
" the Profit of the King, nor of the Commons.

" And in caſe the Pope will not grant it in Manner aboveſaid, the
" Commons pray our Lord the King, that he will be in Aid and
" Maintenance of them, to defeat this Charge, and to put ſuch out of
" his Protection.

" And the Commons pray our Lord the King, that he will com-
" mand all the Peers and Great Men of the Land, that remain in Peace
" at this preſent Parliament 'till theſe Things be perfected and ſealed as
" is aforeſaid.

" And for the great Damage that may happen in the mean Time,
" may it pleaſe our Lord the King to grant his Prohibitions as Execu-
" tors *des Graces Eveſques & Procurors*, that they meddle not in this
" Matter, until the Pope hath back his Will.

" To this the King anſwered,

" The King is adviſed of this Miſchief, and wills the Great Men and
" the Commons to ordain Remedy and Amendment, and he will agree
" to it.

" And alſo the King wills, and it is aſſented, That good Letters ſhould
" be made to the Pope upon this Matter, as well from the King and
" Great Men, as from the Commons.

Idem, N° 60. dorſo.

" And after our Lord the King was praiſed in this Parliament,

" 1. *Per Countes, Barons,*

" 2. *Et autres Nobles, & tout le Communalte du Royalme,*
" for eſchewing and ouſting the Damages, Grievances and Oppreſſions
" of the *People*, and of the holy Church of *England*, which are made
" in the Realm of *England* by Proviſions and Reſervations in the Court
" of *Rome*, as well of Benefices as of Firſt Fruits, and by Impoſition
" of Tythes and other Charges, in Diſheriſon as well of our Lord the
" King and of his Crown, as of the ſaid Earls, Barons, and other
" Noblemen, and the aneantiſing of the Rights of the Crown, our

" Lord

" Lord the King would cauſe to be kept the Petitions thereof de-
" livered,

" 1. *Per Countes, Barons,*

" 2. *Et Communes*

" of the Realm of *England*, in the Time of the moſt Noble King *Ed-*
" *ward*, Grandfather of our Lord the King that now is, whom God
" aſſoile, in his Parliament held at *Carliſle* in the 35th Year of his Reign;
" and alſo the Aſſent, and Accord, and Judgment thereupon made in
" the ſame Parliament.

" And our Lord the King granting that Requeſt, commanded the
" Rolls and Remembrances of the ſaid Parliament of his ſaid Grand-
" father to be ſearched and looked into; which being ſeen and peruſed,
" amongſt other Things it was found, That at the ſhewing of the

" 1. *Countes, Barons,*

" 2. *Et Communes*

" of the ſaid Parliament of *Carliſle*, by their ſaid Petitions among o-
" ther Things containing, That as Holy Church in the State of Pre-
" lacy in the ſaid Kingdom was founded, by the Grandfather of our
" Lord the King, and his Progenitors Earls and Barons, and their An-
" ceſtors, to have Information of the Holy Faith, and to make Prayers
" and Alms and Hoſpitalities in the Places where the Churches were
" founded for the Souls of their Founders and their Heirs, and of all
" Chriſtians; and that certain Poſſeſſions as well Fee and Lands, as
" in Advowſons, amounting to a very great Sum, were aſſigned for
" Archbiſhops, Biſhops, Abbots, Priors, and other Houſes of Religion,
" by the ſaid Grandfather and his Progenitors, and the Earls, Barons,
" and other Great Men of the Kingdom and their Anceſtors: And that
" the ſaid Grandfather of our Lord the King, and the Earls, Barons,
" and other Nobles of the Realm, as Lords and Avowees, had and
" ought to have in the Time of the Vacancies of ſuch Prelaties and
" Houſes, Preſentments and Collations of all manner of Benefices being
" of the Avoury of ſuch Prelates, and to give them to the Denizens that
" held great Place under the ſaid Grandfather of our Lord the King,
" and the Great Men aboveſaid, for their Wiſdom and Counſel, when
" they ſhould have occaſion.

" And that the Pope that then was, appropriating to himſelf the Ad-
" vowſons of ſuch Poſſeſſions and Benefices by his Proviſions and Re-
" ſervations, and given and granted Dignities, Provendries and Churches
" to ſuch as never had reſided in the Kingdom of *England*, and to
" Cardinals and others, as well Aliens as Denizens, who could not re-
" ſide here, as if he had been the true Patron; and that of right as
" he was not.

" By which Things, if they were ſuffered, ſcarce any Benefices would
" remain in the Gift of ſuch Prelates, which would not be put in the

" Hands

" Hands of Aliens and Denizens, againſt the good liking and will of " the Founders of them: And ſo the *Elections of ſuch Archbiſhops, " Biſhops, and other Religious Perſons, would want Oriſons, Hoſpi- " talities and Alms, which ought to be made in the ſaid Places, would " be withdrawn; and the ſaid Granfathers and others Lay Patrons in " the Time of ſuch Vacancies would loſe their Preſentments and Col- " lations, and the ſaid Council would be deſtroyed, and Goods in great " Plenty ſhould be carried out of the Realm, to the amentizing of the " State of the Holy Church of *England*, and in Diſheriſon of the ſaid " Grandfather and of his Crown, and of the other Nobles of the ſaid " Realm; and in Offence and to the Deſtruction of the Laws and " Rights of the ſaid Realm, and very great Damage and Depreſſion of " the ſaid People, and Subverſion of the State of the whole Realm " aforeſaid, and againſt the Wills and Ordinances of the firſt Founders. " Which Errors and Damages aforeſaid being ſeriouſly [conſidered] in " the ſaid Parliament of *Carliſle*; it was, *d'aſſent*

" 1. *Des Countes, Barons, & Nobles,*

" 2. *Et de la dite Communaltee,*

" Provided, accorded, adjudged, ordained and conſidered, that the be- " fore-named Grievances, Oppreſſions, and other Damages and Errors " aboveſaid, from thenceforth ſhould not be ſuffered to be done in the " ſaid Realm, in any Manner.

" And thereupon it was prohibited by the ſaid Grandfather, by his " Writs to all to whom it then belonged, that they ſhould not attempt, " or cauſe in any manner to be attempted, any thing that might turn to " the blemiſhing or impairing of his Royal Dignity, or to the Preju- " dice of the Nobles or his People. And thereupon all the Sheriffs of " the ſaid Realm were by certain Writs commanded, That, if by Inqueſt " thereof taken, any could be found doing to the contrary; Then they " ſhould apprehend them, and ſhould bring them ſafely and ſecurely " before the ſaid Grandfather, to anſwer him; as alſo to others that " would complain of them, and to do moreover and receive what the " ſaid Court ſhould award in ſuch Caſe.

" Wherefore our Lord the King, in this preſent Parliament, at the " Suit of the ſaid Communalty of his Realm, ſuggeſting by their Pe- " tition given to our ſaid Lord the King and his Council, many Er- " rors, Damages and Grievances, which had often happened by ſuch " Proviſions and Reſervations, as well by thoſe Benefices as of Firſt " Fruits and others whatſoever, and of Impoſitions of Tenths and other " Charges, made by the Pope now laſtly, to the Slander, Diſhonour, " and Oppreſſion of the whole Church of *England*, and to the Diſhe- " riſon of our ſaid Lord the King and his Crown, and of the other

* Et uſini les Elections des lieux Erceveſques, Eveſques, & autres religious ſandroient oraiſons, hoſpitalities, & aumoignes.

" Nobles of the ſaid Realm, and in Offence and to the Deſtruction of " the Laws and Rights of the ſame Realm, and to the grievous Da- " mages of the People, and Subverſion of the Eſtate of the whole " Realm aforeſaid, and againſt the Will of God, and the good Diſpo- " ſition of the Founders of the ſame Benefices, and againſt the Purvey- " ance, Ordinance, Accord and Decree, and the Conſideration afore- " ſaid made by the ſaid Grandfather and his Council: And praying " our ſaid Lord the King, that he would pleaſe to have regard to the " ſaid Church of *England*, and to the Indemnity and Diſinheriſon of " him, *Et*

" 1. *Des ditz Countes, Barons, & Nobles,*

" 2. *Et de la Communaltee,*

" in this behalf; and to put convenient Remedy thereto, by the Aſ- " ſent,

" 1. Of the Earls, Barons, and Nobles,

" 2. And of the Communalty

" of the Kingdom, hath provided, ordained, decreed and adjudged and " conſidered, that as well within the Franchiſe of the *Cinque Ports*, as " elſewhere by the Sea Coaſts of all the Realm of *England*, and through " all the Counties of the ſaid Realm, as well within Franchiſe as with- " out, ſhould be openly proclaimed, and by our ſaid Sovereign Lord " the King ſtraitly forbidden, That none, of what State or Condition " ſoever he be, be he Alien or Deniſen, ſhould from henceforth bring " or cauſe to be brought within the Realm of *England*, upon a grie- " vous Forfeiture to the King, Letters, Bulls, Proceſſes, Reſervations, " Inſtruments, or any other Things prejudicial to the King or his Peo- " ple, to deliver them to Archbiſhops, Biſhops, Abbots, Priors, Earls, " Barons, or any others within the ſaid Realm:

" And that none by virtue of ſuch Proviſions or Reſervations receive " Benefices of Holy Church:

" And that none upon the aforeſaid Forfeiture receive or take ſuch " Letters, Proceſs, nor Inſtruments touching ſuch Proviſions or Reſer- " vations:

" Nor by virtue of them make Inſtitution, or Induction, or other " manner of Execution of them:

" And that none do or ſuffer to be done, any other Thing that may " turn to the Prejudice of the King, and of his People, to the embel- " liſhing of the Rights of his Crown, and of the Proviſions, Ordi- " nances, Accords, Decrees, and Conſiderations aforeſaid.

" And alſo it is accorded, That moreover diligent Search be made " in ſuch Places, as ſhall be thought requiſite within the ſaid Realm, " as well within Franchiſe as otherwhere, upon all and every one " coming into the Realm of *England*: And that all thoſe that ſhall be " found by ſuch Search, or by Inqueſt thereof to be taken by Informa- " tion,

" tion, bringing Letters, Bulls, Proceſs, Reſervations, or Inſtruments, " or other Things prejudicial to the King or his People, and all thoſe " who by virtue thereof receive any Benefices, or put themſelves into " them, or be received into the ſame Benefices; and alſo thoſe who by " Authority of Letters, Bulls, Proceſs, Reſervations or Inſtruments, " ſhall or do make Appeal, Actions or Proceſs, againſt the Patrons of " the ſaid Benefices, their Preſentees, or others whatſoever; or proſe- " cute them, or procure them to be proſecuted in any Court whatſo- " ever; or procure any thing to be done, *En prejudice*

" 1. *Du Roy*,

" 2. *Ou des Countes, Barons, Nobles*,

" 3. *Et de la Communaltee ſuſdite*,

" or the emblemiſhing or defeating of the ſaid Proviſions, Ordinances, " Accords, Decrees, and Conſiderations, and againſt the Proclamation " and Inhibition aforeſaid, to be taken and arreſted by their Bodies, and " the Letters, Bulls, Proceſs, and Inſtruments upon ſuch Proviſions and " Reſervations to be taken from them, *ou des autres quen port qils ſoient* " *trovez & envoyes*, before the King's Council, together with their Bo- " dies who ſhall have brought them within the ſaid Realm of *England*, " *Wales*, *Ireland*, or within the County of *Cheſter*, or put them at all " in Execution, together with the Bodies of all others that ſhall be taken " and arreſted for the Cauſe aforeſaid, to take and receive what the Court " ſhall award.

" And that thereupon Writs and Letters be made, ſo many and ſuch " as ſhall be neceſſary, and ſent throughout all the Realm.

Purſuant to all which, a Letter was ſent to the Pope in *French*, a Copy whereof, when I was concerned in the City of *London*'s Charter, I met with entered in one of the Books at that Time, and is thus tranſlated by Mr. *Fox*.

Fox's Acts and Monuments, *vol.* 1. *fol.* 436. *printed in the Year* 1674.

" To the moſt Holy Father in God, Lord *Clement* by the Grace of " God, of the Holy Church of *Rome*, and of the Univerſal Church, " Chief and High Biſhop, his humble and devout Children,

" 1. The Princes, Dukes, Earls, Barons,

" 2. Knights, Citizens, Burgeſſes, and all the Communalty of the " Realm of *England*,

" aſſembled at the Parliament holden at *Weſtminſter* the fifteenth Day " of *May* laſt paſt, devout Kiſſings of his holy Feet, with all humble " Reverence and Humility.

" *Moſt Holy Father*,

" The holy Diſcretion, Government, and Equity, which appeareth " to be in you, and ought of Duty to be, (being ſo High and Holy a " Prelate, and Head of the Holy Church, by whom the Holy Univerſal

" Church

" Church and People of God ought to be as the Sun-Beams enlightned,
" give us good Hopes and Likelyhood that the juſt Petitions (to the
" Honour of *Jeſus Chriſt* and Holy Church, and your Highneſs alſo)
" by us declared, ſhall be of you graciouſly heard and conſidered.

" And that all Errors and other Iniquities ſhould be quite taken
" away and removed, inſtead whereof faithful Exploits and neceſſary
" Remedies (by the Grace of the Holy Spirit, which you in ſo high
" an Eſtate have received) may be by you likewiſe graciouſly ordained
" and diſpoſed.

" Wherefore, *Moſt Holy Father*, All we,

" 1. Upon great Deliberation,

" 2. And common Aſſent,

" come unto your Holineſs, ſhewing and declaring,

" 1. That the Noble Kings of *England* our Progenitors, our Ance-
" ſtors, and we (according to the Grace of the Holy Spirit to them and
" us given, every one according to his Devotion,) have eſtabliſhed,
" founded and endowed within the Realm of *England* Churches, Ca-
" thedrals, Colleges, Abbeys, Priories, and other divers Houſes of Re-
" ligion in the ſame ordained:

" 2. And to the Prelates and Governours of the ſame Places, have
" given Lands, Poſſeſſions, Patrimonies, Franchiſes, Advowſons and
" Patronages, Dignities, Revenues, Offices, Churches, with many and
" divers other Benefices unto them given.

" 3. Whereby the Service of God and Faith of *Chriſt* might have
" been honoured and had in reverence, that the Hoſpitals and Alms-
" houſes that are made with all the Churches and Edifices, might be
" honeſtly kept and maintained; and that devout Prayers might in
" thoſe Places be made for the Founders, and the poor Pariſhioners
" aided and comforted: And ſuch only ought to have Cure thereof,
" as are able to hear Confeſſions, and in their own natural Tongue are
" otherwiſe meet to inform and teach their Pariſhioners.

" 4. And foraſmuch as, Moſt Holy Father, you cannot well come
" to the Notice of divers ſuch Errors and Defaults, neither yet under-
" ſtand the Condition of the Places, being ſo far off, unleſs your Ho-
" lineſs be informed and advertiſed; we having the perfect Intelligence
" and Underſtanding of the ſaid Errors and Defaults of the Places a-
" boveſaid, within the Realm, have thought meet to ſignify the ſame
" unto your Holineſs.

" 5. That divers Reſervations, Proviſions and Collations, by your
" Predeceſſors Apoſtolick of *Rome*, and by you, Moſt Holy Father, in
" your Time have been granted, (and that more largely than they have
" been accuſtomed to be) unto divers Perſons, as well Strangers and
" of ſundry Nations, as unto ſome ſuch as are our Enemies, having
" no Underſtanding at all of the Tongue and Conditions of them, of
" whom they have the Government and Cure.

" Whereby a great Number of Souls are in Peril, a great many of " the Pariſhioners in Danger, the Service of God deſtroyed, the Alms " and Devotion of all Men diminiſhed, the Hoſpitals periſhed, the " Churches with their Appurtenances decayed, Charity withdrawn, the " good and honeſt Perſons of our Realm advanced, the Charge and " Government of Souls not regarded, the Devotion of the People re- " ſtrained, many poor Scholars unpreferred, and the Treaſure of the " Rich carried out againſt the Minds and Intents of the Founders.

" 6. All which Errors, Defaults and Slanders, Moſt Holy Father, " we neither can nor ought to ſuffer or endure.

" 7. We therefore moſt humbly require your Holineſs, that the " Slanders, Errors and Defaults, which we have declared unto you, " may be through your great Diſcretion conſidered; And that it may " pleaſe you, that ſuch Reſervations, Proviſions and Collections may " be utterly repelled, that from henceforth the ſame be no more a- " mongſt us uſed; and to take ſuch Order and Remedy therein, that " the ſaid Benefices, Edifices, Rights with their Appurtenances may " be to the Honour of God, our own Countrymen cured, defended " and governed.

" 8. And that it may farther pleaſe your Holineſs, by your Letters " to ſignify unto us without Delay and other Protract of Time, what " your Pleaſure is touching this our lawful Requeſt and Demand; " That we may do our Endeavour with Diligence therein, for the Re- " medy, Correction and Amendment of thoſe Enormities above ſpe- " cified.

" In Witneſs whereof, unto theſe our Letters Patents we have ſet " our Seals.

" Given in the full Parliament at *Weſtminſter*, the 18th Day of " *May*, *Anno* 1343.

I have nothing to infer from all this, but to wonder at the ſtupendous Prerogatives which the Pope had by little and little uſurped over both the Crown and Kingdom; and to commend the Courage of the Houſe of Commons, who ſeeing the whole Contexture of the Government ready to be disjointed, They, as being the vital Breath which ſo many thouſands drew in, ſtoutly proteſt they neither could nor would any longer endure thoſe Papal Uſurpations.

And for Concluſion, let the Reader now fairly determine,

Whether the Judges of thoſe Times could poſſibly take it for Law, That the King had ſuch inherent Power veſted in him, as by a *Non Obſtante* put into his Grants, to ſuſpend the general Statutes of Proviſors from *Rome?*

But notwithſtanding this Letter, the Courſe of the Parliamentary Story ſhews us, that the Pope would not abate an Inch of that abſolute Sovereignty, leſt he ſhould ſeem to be diſpirited, or do any thing to the Diſinheriſon of the Triple Crown. And this will appear by

The Second Authority.

Rot. Parliam. 25 Edw. III. N° 13.

In the Parliament held *ann.* 25 *Edw.* III. the Commons pray, "That "our Lord the King and Peers of the Land will be pleaſed to look and "have regard to a novel very great Miſchief and Deſtruction, which ap-"parently threatens the Kingdom of *England* now of late; to wit,

"That although the Pope uſed not heretofore to make Reſervations "of any Benefices of Holy Church, unleſs of Benefices belonging to his "Chaplains, or ſuch Clerks as were ſworn in the Court of *Rome*; yet "now of late, out of Covetouſneſs to have the Firſt Fruits and other "Profits thereunto belonging, hath reſerved and doth daily reſerve to "his Collation generally and eſpecially, as well Abbeys and Priories "as all the other great Benefices of *England*, which are of Spiritual "Patronage.

"And generally he hath now reſerved of late all the Dignities of "*England*, and Provendries in Cathedral Churches, and given them "as well to Aliens as Denizens, by which means the Pope gets all the "Firſt Fruits of thoſe Benefices.

"And beſides all this, they that purchaſe ſuch Benefices, pay the "double or the treble *en Brocage*; and ſo the Treaſure of the Realm is "deſtroyed and carried away yearly, to ſo great a Value, that the King-"dom can by no means bear it without being undone, if ſpeedy Re-"medy be not had.

"For it may be eaſily demonſtrated, that this Thing tends more to "the Deſtruction of the Realm, than our Lord the King's Wars; for "that this Money goes yearly to the Court of *Rome*, without ever re-"turning, and amounts to more yearly than the King carries out of the "Realm.

"And it is commonly ſaid, That this our Treaſure redounds to the "Profit of our Enemies, to enable them to a War againſt ourſelves; "and ſo conſequently it appears clearly, that the ſaid Reſervations are "compaſſed ſubtily and by evil Artifice, to the Ruin of the King "and of all the Kingdom, and to the Aid and Comfort of Ene-"mies.

"And on the other hand, many times by ſuſpicious and feigned "Reſervations ſuppoſed to be privily made, many ſufficient Clerks of "the Kingdom, who have for a long time continued in the Poſſeſſion "of their Benefices by good Title, *enſont ouſtez & debetez*, by ſuch "Brokers againſt God and Right, and can obtain no Recovery "thereof.

"Whereof

" Whereof may it pleaſe our ſaid Sovereign Lord the King, and his " Council, to ordain Remedy for the ſaid Miſchiefs, now in this Par- " liament: for the longer the Thing be ſuffered, the harder it will be " to be redreſſed.

" ANSWER.

" It is agreed, That the Anſwer to the Petition be made a Sta- " tute.

And ſo it was:

Which recites, " That the Commons grievouſly complaining that " the Statute made in the 25th Year of *Edw.* I. againſt Proviſions " from *Rome* had not been kept and obſerved, as it ought to have " been.

Raſtal's Stat. 25 Edw. III. *The Statute of Proviſors of Benefices.*

And therefore the Commons prayed the King,

" That ſith the Right of the Crown of *England*, and the Law of the " ſaid Realm was ſuch, That upon the Miſchiefs and Damages which " happened to this Realm, he ought and was bound by his Oath with " the Accord of his People in Parliament, thereof to make Remedy and " Law, and in removing the Miſchiefs and Damages which thereof " might enſue; he would thereupon ordain Remedy."

To all which the King anſwered,

" 1. That he ſeeing the Miſchiefs and Damages before mentioned:

" 2. And having a Regard to the ſaid Statute made in the Time of " his ſaid Grandfather, and to the Cauſes contained in the ſame.

" 3. Which Statute had always held its Force, and was never de- " feated, repealed, nor annulled in any Point.

" 4. And by ſo much as he was bounden by his Oath to cauſe the " ſame to be kept, as the Law of his Realm, though by Sufferance " and Negligence it had been ſithence accounted to the contrary.

" 5. Alſo he, having regard to the grievous Complaints made to him " by his People in divers his Parliaments holden heretofore:

" 6. And being willing to ordain Remedy for the great Damages and " Miſchiefs which had happened and daily did happen to the Church " of *England* by the ſaid Cauſe.

" The King therefore, by the Aſſent

" 1. Of the Great Men,

" 2. And the Communalty

" of the ſaid Realm, to the Honour of God, and Profit of the ſaid " Church of *England* and of all his Realm, made a farther Law a- " gainſt Proviſors of Benefices from *Rome*."

The General Inference which I ſhall draw from hence ſhall be, That this Statute in ſome Particulars was only declaratory of the ancient Law of *England*. For,

1. It

1. It proves, That Parliaments were inſtituted for the Safety and Benefit, and to prevent the Prejudice and Danger, both of King and Kingdom.

2. That the Right of the Crown and the Realm was ſuch, that our Kings were bound by their Oaths to make Remedy and Law for removing of Miſchiefs and Damages, which might happen. But how was that to be done? Not by the Judges in *Weſtminſter Hall*; No, but by Accord of their People in Parliament.

3. It likewiſe proves, That Statutes did always hold their Force, 'till they were repealed by the ſame Authority that made them.

4. And laſtly, That though by Sufferance and Negligence it might be attempted to the contrary, yet that the King was bound by his Oath to cauſe the ſame to be kept, as Part of the Laws of the Realm.

It being ever of the Eſſence of an *Engliſh* King to govern according to Law.

From which I conclude,

That the *Jus Regium Coronæ*, or the King's Supreme Power in diſpenſing with General Statutes, could not be confirmed by the common and Statute Laws of this Kingdom before the Reign of *Edward* III.

In a Word, it is very obſervable, that this Statute was made by the valiant and victorious Prince *Edward* III. who had at one time ſitting with him at his Table, *David* King of *Scots*, and *John* the *French* King, as his Captives.

The Third Authority.

In the opening of a Parliament held at *Weſtminſter*, in the 15th Year of *Richard* II. the Archbiſhop of *York* being then Lord Chancellor of *England*, by the King's Appointment declared the Cauſe of ſummoning the Parliament.

The Third Cauſe was touching the Statute of *Proviſions*; to ordain and ſee how Holy Father the Pope might have that which appertained to him, and the King what belonged to him and his Crown, according to that divine Rule, *Reddite quæ ſunt Cæſaris Cæſari, & quæ ſunt Dei Deo.*

Rot. Parliam. 15 Rich. II. N° 8.

After which, in the Parliament Roll it is entered concerning the Statute of *Proviſions*, " That the Commons, for the great Affiance which " they have in the Perſon of our Lord the King, and in his moſt ex- " cellent Wiſdom; and in the great Tenderneſs which they have for " the Crown and the Rights thereof; and alſo in the noble and great " Diſcretions of the Lords, have aſſented,

" *En plein Parlement*,

" That our ſaid Lord the King, *per* Advice and Aſſent of the ſaid " Lords, *may* make ſuch Toleration touching the ſaid Statute, as he " ſhall think reaſonable and profitable, 'till the next Parliament: So

" as

" as the ſaid Statute be not repealed in any Article thereof; and ſo " as they who have any Benefices by virtue of the ſaid Statute, before " this preſent Parliament; and alſo all ſuch as any Aid, Eaſe, or Ad- " vantage is accrued to, by virtue of the ſaid Statute, and of the Bene- " fices of Holy Church, of which they were then in poſſeſſion, as well " by Preſentation or Collation of our Lord the King, as of the Ordi- " naries, or any other Religious Perſons, or by any other Ways or " Means, may freely have and enjoy the ſame, and peaceably continue " their Poſſeſſions thereof, without being ouſted thereof, or any ways " challenged or impeached, moleſted, inquieted or grieved, by any " Proviſions, or otherwiſe, contrary to the Form and Effect of the " ſaid Statute, by reaſon of any ſuch Sufferance in time to come.

" And farther, That the Commons may diſagree at the next Par- " liament to ſuch Tolerations, and fully reſort to the ſaid Statute, if " they ſhall think good:

" With Proteſtation, that this their Aſſent, *qu'eſt une & nad* " *my eſtre faite devant c'eſt heures ne ſoit trahit en enſample, n'en con-* " *ſequence en temps avenir.*

" And they pray our Lord the King, that this their Proteſtation may " be entered upon Record in the Parliament Roll: Whereto the King " agreed, and commanded it to be done."

Our great Lawyers from this Authority may learn what the Antiquity of the King's Suſpending or Diſpenſing Power was, more certainly than from all the Books in their Studies.

Nothing can be more plain and expreſs, than that the Statute of *Proviſors* was a Penal Law. But if the Truſt and Power of ſuſpending Penal Statutes were ſo inſeparably united unto the Royal Perſons of our Kings, and ſo inherent in the Crown, as our modern Judges have unanimouſly reſolved they were; Let them tell me,

1. How came it to paſs, that the Lord Chancellor of *England* ſhould *en plein Parliament* declare, by the King's Command, that one of the Cauſes of ſummoning that Parliament was to gratify the Poor with a Relaxation of the Statute of *Proviſors?*

2. What, I pray, had the Commons to do to grant that King an Authority, with the Advice and Aſſent of the Lords, to make a Sufferance or Diſpenſation of that Penal Law?

3. And that too, but 'till the next Parliament; and then to diſagree to ſuch Sufferance, if the Commons thought good?

4. Beſides, which ſpeaks loudly both to the Right and Practice of that and preceding Times, they ſolemnly proteſted, in full Parliament, That what they had then done was a Novelty, had not been done before, and was not to be drawn into Example nor Conſequence in time to come.

5. And laſtly, to ſum up the whole, Their Proteſtation was by Agreement and Command of the King entered upon the Parliament Roll or perpetual Record, to prove,

That the Truſt and Power of ſuſpending General Statutes could never be underſtood by the Judges of thoſe Times, to be inſeparably united to and inherent in the Crown. For it was a Grant by this Parliament, and that too only for a Time, and by reaſon of the great Affiance they had in the Perſon of that very King, and in his moſt excellent Wiſdom; and not for ever to all his Succeſſors that ſhould then after happen to be.

And for a farther Juſtification of this Concluſion, we will deſcend to

The Fourth Authority.

Rot. Parliam. 16 Rich. II. N° 8. In the Parliament of the 16th of *Richard* II. it is entered concerning the Statute of *Proviſors*, "That the Commons, for the great Affiance, "Affection, and Aſſurance, which they have in the Noble Perſon of "our Lord the King, and in his moſt excellent Wiſdom and Diſcre-"tion; and alſo in the great Tenderneſs which he hath for his "Crown, and his Country, and the Rights thereof, have agreed and "aſſented,

"*En plein Parlement*,

"That our ſaid Lord the King, by good Deliberation and Aſſent *des* "*Seigneurs de ſon ſage Counſell*, taking the whole Matter to them, ſhall "have full Power and Authority *de modifier* the ſaid Statute, and to "ordain, by Deliberation and Aſſent aforeſaid, as he ſhall think moſt "conducing to the Honour of God, and of Holy Church, and the Pre-"ſervation of the Rights of his Crown, and the Eſtate and Profit of "his Realm; and to put in execution whatever ſhall be ſo or-"dained.

"And that at the next Parliament all the aforeſaid Things ſhall be "fully ſhewn to the ſaid Commons, to the end that they may then "by good Advice agree thereunto, if it ſhall pleaſe God."

Now to make this Authority farther advantageous to the Point in Diſpute, we may obſerve,

1. That whereas by the laſt Authority Power was given to the King to make Diſpenſations with the Statute of *Proviſors*, by the Advice and Aſſent of the Lords; now by this he had Authority granted to modify the Statute, by the Advice and Aſſent of the Lords of his ſage Council.

2. But ſtill thoſe Modifications were to be ſubject to the Aſſent or Diſſent of the Commons, at the next Parliament.

The Fifth Authority.

It farther appears by the Parliament Roll of the 20th of *Richard* II. concerning the Statute made about *Proviſions* from the Court of *Rome*, in the 16th Year of his Reign, " That the Commons of his Kingdom " of *England*, being in Parliament, for the great Affiance which they " had in the Perſon of the King, and in his moſt excellent Wiſdom and " Diſcretion; and in the great Tenderneſs and dear Love which he had " above all others to his Crown, and the Rights thereof, and to the Pre- " ſervation of his Royal Eſtate, Aſſented voluntarily on their Part, Rot. Parliam. 20 Rich. II. No 21.

" *En plein Parlement*,

" That the King, *per aſſent & advice de Tieux Sages & Dignes Per-* " *ſones* as he ſhould pleaſe to call to counſel him thereupon, might " make *tielx Soeffrance*, *Ordenance*, and Moderation concerning the " ſaid Statute, as he ſhould think moſt reaſonable, and moſt to the " Pleaſure of God, and the Safety of Holy Church, according to his " high Diſcretion, ſaving the Rights of his Crown and his Royal " Eſtate:

" So as at the next Parliament ſuch Sufferance, Ordinance and Mo- " deration ſhould be heard and examined; and thereupon affirmed, or " corrected and amended, or altered, according as ſhould then ſeem by " Advice of his Council in the ſaid Parliament, moſt for the Honour " of God, the Safety of Holy Church, and the Benefit of his Realm " and People."

Now if the Suſpending Power was ever an Eſſential of the Government lodged in the common Repoſitory of all the Enſigns of Majeſty, as being incorporated with the firſt Principles of our Government; and ſo to be exerted from time to time, at the Will and Pleaſure of the King, as ſome of our late Writers have affirmed;

Let them tell me, without pretending to a particular Revelation, what was the *Engliſh* of this Authority.

But to proceed,

" *Item*, Preſently after the Proceedings of the Commons, the Arch- " biſhops of *Canterbury* and of *York*, on the behalf of themſelves and " the other Prelates of their Provinces, ſpake openly to the King in " Parliament, proteſting, That they had made Profeſſion and were " ſworn to the Holy Father the Pope, and the Court of *Rome*. And " therefore, in caſe any Ordinance or other Thing ſhould be done or " aſſented to, by the King, or Lords Temporal, by their Power and " Authority in Parliament, touching *Proviſions* from the Court of *Rome*, " which might be in oppoſition to the Power of the Apoſtle, or in " derogation of the Liberty of Holy Church, in any manner they would " not be bound by them: Rot. Parliam. 20 Rich. II. No 22.

" But

" But did on their Part contravene and diſaſſent, for ſo much as con-
" cerned them.

" Saving always their Eſtate with reſpect to the Royal Perſon of the
" King, to which they have done Fealty by Oath for their Temporali-
" ties, which they intended duly to keep as they were held:

" Saving the Liberty of Holy Church, and their Profeſſion to Holy
" Father, as aforeſaid.

" And they prayed the King, That this their Proteſtation might be
" entered on the Parliament Roll, which the King agreed to and com-
" manded to be done."

But it may be objected, That in this and the foregoing Authorities, ſometimes the Lords are left out, and ſometimes the Commons.

To this I anſwer, in the Words of the Learned *Selden*:

" *Certiſſimum eſt* (ſays he) that according to Cuſtom, no Anſwer was
" given, either by the King, or in the King's Name, to any Parlia-
" mentary Bills, before that the Bill, whether it was brought in firſt
" by the Lords or by the Commons, had paſſed both Houſes; as it is
" known to all that are verſed in the Affairs and Records of Parlia-
" ment.

" And when the Name of either of them is left out in the Draught
" of the Bill (as the Lords were in the Caſe there alledged) it was wont
" to be ſupplied, as it is alſo at this Day, by the brief Form of Aſſent,
" which is added by that Houſe, to whom the Bill is ſent and tranſ-
" mitted.

" For that Houſe which prefers it, tranſmits it to the other, who
" either gives an Aſſent, or rejects it,

" And when both Houſes have ſo given their Aſſent, then after a
" while, either the King gives his Aſſent (whereby it becomes an Act
" or Law) or elſe he lays it aſide, and (as Mr. *Selden* had there ſhewn)
" takes Time to adviſe; neither of which was ever done by the King,
" according to the Courſe of Parliament, 'till both Lords and Com-
" mons had given their Aſſent."

This I have thought fit to note here, that ſo Truth may have room to gather Breath, and not be ſtifled by falſe Inferences from miſtaken and miſapplied Premiſſes, confirmed by the Ignorance of the Nature and Method of Parliamentary Proceedings in former Times; and which have been of late publiſhed to the World for good and warrantable Law.

And in particular, that the King and his Council only made Laws; becauſe there are ſome Statutes and Acts of Parliament to be met with in our Statute Books, wherein there is no mention made either of the Lords or Commons.

I know there are weak Men of all Profeſſions, for whom no body can anſwer: But it is an Aſtoniſhment that ever ſuch a Notion ſhould obtain

obtain with Men of any Share of Senſe and Knowledge in the Law of *England*, as of late Years it hath, unleſs it were out of a mercenary Deſign; which if ſo, muſt make them guilty of a high Violation of our ancient Conſtitution of Parliaments, and of an unpardonable Injury, not only to all true *Engliſh-Men* now living, but to Ages that ſhall follow, in aſſerting and tempting the World to believe it.

The Sixth Authority.

The Parliament Roll in the 1ſt of *Henry* IV. tells us:

" *Item*, Whereas divers Statutes and Ordinances have heretofore been " made, as well in the Time of *Richard* late King of *England*, as in " the Time of other Progenitors of our Lord the King, concerning " *Proviſions* in the Court of *Rome*; the Commons of the Realm of *Eng-* " *land*, in Parliament, for the great Affiance, which they have in the " Perſon of our Lord the King, and in his moſt excellent Wiſdom and " Diſcretion; and in the great Tenderneſs and Dearneſs, which he has " above all others for the Crown and the Rights thereof, and for the " Reſervation of his Royal Eſtate; have on their Part voluntarily " aſſented,

Rot. Parliam. 1 Hen. IV. N° 85. Moderation de l'eſtatute des Proviſors.

" *En plein Parlement*,

" That our ſaid Lord the King, by Aſſent and Advice of ſuch wiſe " and worthy Perſons as he ſhall pleaſe to call to counſel him there- " upon, may make ſuch Sufferance, Ordinance, and Moderation, " touching the ſaid Statute, as to him ſhall ſeem moſt reaſonable, and " moſt to the Pleaſure of God, and the Safety of Holy Church.

" And the ſame Statute may caſſe, repeal, and make void, and an- " null, according to his Highneſs's Diſcretion, and according as he " ſhall think conducing to the Honour of God, and moſt expedient " and neceſſary for the Honour and Profit of his Royal Eſtate, and of " his Realm and People.

This is ſuch an Authority as ought to be conſidered in its higheſt Extent, ſince the grand Queſtion from hence will receive a more eaſy and fuller Reſolution: For we ſee the Commons aſſent in full Parliament,

I. That the King, by Advice and Aſſent of thoſe wiſe and worthy Perſons, whom he ſhould pleaſe to call to Council, may not only make ſuch Sufferance, Ordinance, and Moderation, concerning the Statute of *Proviſors*, as he ſhould think reaſonable.

II. But a Truſt was intruſted perſonally to caſſate, repeal, make void, and annull the Statute itſelf at his high Diſcretion.

1. For the Honour of God.

2. As ſhould be moſt expedient and neceſſary for the Honour and Profit of his Royal Eſtate.

3. And of the Realm and People.

But that which is the main Point of all, is,

III. That the Commons reſerved no Power in themſelves to aſſent or diſſent to ſuch Sufferance, Ordinance, and Moderation, at the next Parliament, as they had done in the former Authorities.

So that whatever our modern Laws, Books, and ſome Divines are pleaſed to ſay, Men muſt be greatly impoſed on to imagine that before this Statute of 1 *Hen.* IV. the Power of ſuſpending of general Penal Laws was ſuch a Prerogative as was always at Common Law, innate and incident, ſolely and inſeparably, unto the Royal Perſons of our Kings: or was ſuch a Right as was involved in the very Notion or formal Conception of Imperial Sovereignty.

The Seventh Authority.

Rot. Parliam. 2 Hen. IV. N° 26. Moderation de l'eſtatute de Proviſors.

" *Item*, Upon *Wedneſday* the 2d Day of *March*, *ann.* 3. of the ſame " *Henry* IV. the Commons came before the King, and the Lords " in Parliament, and there ſhewed, That whereas in the laſt Parlia- " ment a certain Sufferance, Ordinance, and Moderation of the Statute " of *Proviſors*, was left to the Ordinance and Diſpoſition of our moſt " dread Lord the King; as by the Record thereof made in the Par- " liament Roll, may appear:

" The ſame Commons, entirely confiding in the high Wiſdom and " Diſcretion of our ſaid Lord the King, for the Preſervation of him " and his Honour, and of the Eſtates of his Kingdom, do agree to the " ſaid Sufferance, Ordinance, and Moderation, according as is contained " in the ſaid Roll of the laſt Parliament.

" Praying our Lord the King, that no Sufferance, Ordinance, or " Moderation, may be anywiſe made or hold Place for Cardinals or " other Aliens to hold Benefices within the Realm.

Id. 2 Hen. IV. N° 45. Affirmance del moderation de l'eſtatute des Proviſors.

" *Item*, On *Thurſday* the 10th Day of *March*, the Commons ſhewed " to our Lord the King, That whereas on *Wedneſday* laſt paſt, to wit, " the 9th Day of *March*, the ſaid Commons had ſhewn in particular, " That the Article touching the Moderation made at the laſt Parlia- " ment held in the firſt Year of his Reign, upon the Statute of *Provi-* " *ſors*, was otherwiſe enacted and entered in the Parliament Roll.

" And thereupon the ſaid Commons prayed our ſaid Lord the King, " That the Matter might be examined by the Lords Spiritual and Tem- " poral in Parliament.

" Which Prayer our ſaid Lord the King granted, and with a Pro- " teſtation, That his Will was not that any ſuch Examination ſhould " be in Time to come of any ſuch Record made in Parliament; nor

" that

" that the ſame in every ſort ſhould be drawn into Example or Conſe-
" quence in any Time to come.

" Upon which Matter the Lords Spiritual and Temporal, and the
" Juſtices and other Counſellors of our Lord the King, being ſeverally
" examined,

" *En plein Parlement*,

" In the King's Preſence, the ſaid Commons atteſted, That the ſaid
" Moderation was duly and juſtly entered and enacted in the Parlia-
" ment Roll, in Manner as it ſhall be ſpoken and agreed to,

" 1. *Per les Seigneurs*,

" 2. *Et les Communes ſuiſdits*,

" Which Entry and Enacting ſo made, the King remembered to have
" been well and juſtly made, in Manner as it was agreed to in the laſt
" Parliament."

As the Truth of Matter of Fact, which we find in this important Authority, is above vain Cavils of any Man whatſoever;

So it leads us to a clear different Way of Reaſoning and Argument, from what of late hath been uſed by our modern Lawyers, and with all becoming Reverence to their Opinions.

It demonſtratively proves, that their Reſolutions were not governed by Law, but by the Exceſſes of Government.

For none but thoſe who acknowledge no other Rule of Law, but ſuch as either agrees with their Paſſion or Intereſt, can at this time of the Day fancy that

1. Becauſe the Kings of *England* were Sovereign Princes,
2. And the Laws were the King's Laws;
3. Therefore it was one of the *Regalia Suprema*, or Eſſential Rights of their Sovereignty, to ſuſpend and diſpenſe with general Statutes, upon neceſſary Reaſons; the Kings were ſole Judges.

Certainly, if ſuch a Perfection and Fullneſs of Imperial Power had ever been inſeparably annexed to the Crown, then it muſt likewiſe be unalterable.

And I would aſk them, When and how it could be loſt, ſince it cannot be denied to be a juſt Animadverſion?

If, I ſay, that

1. Neither the King himſelf,
2. Nor the Juſtices and King's Counſellors,
3. Nor the Lords,
4. Nor the Commons,

knew any thing at all of the new advanced Doctrine, that there was ſuch a Prerogative or Pre-eminency of Power and Abſoluteneſs lodged in the *Engliſh* Monarchy.

And therefore this one Authority may be a compleat Standard for the Reſolution of the main Queſtion, touching the King's Right of Diſpen-

Diſpenſation with general Statutes, as well in Matters Eccleſiaſtical as Temporal.

In the next place, we are to examine the King's Exerciſe of his Diſpenſing Power concerning the Statute of *Proviſors* granted to him by the ſaid Statute of the ſecond Year of his Reign.

Firſt, In the 7th Year of *Henry* IV. we meet with the following Statute.

Pulton's Stat. 7 Hen. IV. cap. 8.

" *Item*, To eſchew many Diſſenſions, Diſorders, and Debates, and " divers other Miſchiefs very like to riſe and grow, becauſe of many " Proviſions made and to be made by the Pope;

" And alſo in reſpect of Licences granted upon the ſame by the King " our Sovereign Lord;

" It is ordained and eſtabliſhed, That no Licence or Pardon ſo granted " before this Time, nor to be granted in Time to come, ſhall be avail- " able to any Benefice full of any Incumbent, at the Day of the Date " of ſuch Licence or Pardon granted."

By this Statute we ſee the Prerogative which had been granted to that King in the firſt Year of his Reign by Authority of Parliament, was reſtrained and limited in granting Licences or Pardons in particular Caſes.

The Eighth Authority.

The Commons, in a Parliament held in the 8th Year of *Henry* IV. pray,

" That whereas You our Sovereign Lord have made, or You and " your Heirs in Time to come may make ſeveral Collations or Preſenta- " tions to divers of the Lineage of *England*, of Dignities, Offices, Pre- " bends, and other Benefices of Holy Church; as alſo other Patrons " have, or may make to Benefices of their Advowſon; and ſeveral Pro- " viſors, by Authority from the Pope, have accepted, do at preſent, " or purpoſe in Time to come, to annex ſuch Dignities, Offices, Pre- " bends or Benefices; although ſuch Proviſors, their Procurators, No- " taries or Friends, many Times are arreſted and compelled by Autho- " rity of your Laws, to find Surety in your Courts, that they will ne- " ver attempt any thing in the Court of *Rome*, that ſhall be contrary " to your Regality and Laws, or to the Execution or Effect of your " ſaid Collations or Preſentments.

" Yet ſuch Proviſors make divers Proceſſes . . . . . againſt " the ſaid Preſentees or Incumbents being in poſſeſſion by virtue of ſuch " Collations or Preſentments, their Procurators, Notaries, and other " Perſons of their . . . . . in this Court of *Rome*, as well in " Perſon as by their Agents, Proctors, and others their Friends to " anſwer

" anſwer . . . . . the Titles of the ſaid Benefices: As alſo to " anſwer concerning Sureties found by ſuch Proviſors, their Notaries " or Procurators in your Courts, ſometimes on pain of being deprived " of all their Benefices obtained or to be obtained; and of the incapaci- " tating of their Perſons: And ſometimes on pain of Excommunication; " mentioning therein the Penalty of a Thouſand Pounds, or more or " leſs at their Pleaſure: The one Moiety thereof to the Party, and the " other Moiety thereof to be applied to the Chamber of our Holy Fa- " ther the Pope, in derogation of your Regality, and contrary to the " Laws of your Realm; and to the unſupportable Damage of ſuch " Preſentees and Incumbents.

" May it pleaſe You, of your Royal Majeſty, conſidering the ſaid " Miſchiefs, to ordain and declare in this Parliament, by Aſſent of the " Lords Spiritual and Temporal therein, for the ſaving of your Re- " galty, and the Quiet of your Lieges;

" That if any Proviſors, or any other Perſon whatſoever, purſue or " cauſe to be purſued, or procure in the Court of *Rome*, or ſuffer to be " made in his Cauſe, any ſuch Proceſs, contrary to the Laws of your " Crown and of your Kingdom, and particularly contrary to the Form " of the Statutes heretofore made againſt Proviſors:

" And that this be duly provided, that then ſuch Proviſors, his No- " taries, Procurators, Agents, Fautors, Maintainers and Receivers, " whether within your Realm of *England* or elſewhere, may incur the " Pains contained in the Statutes made againſt Proviſors, in the Reign " of the late King *Richard*, at his Parliament held at *Weſtminſter* the " 14th Year of his Reign, in all Points.

" And if ſuch Proviſors, his Notaries, Procurators, Agents, Fautors, " Maintainers and Receivers, ſhall be beyond the Sea; and that it be " affirmed, for you or your Heirs, or for him that ſhall find himſelf " aggrieved in your *Chancery*, or in that of your Heirs, by Inſtrument " or by Teſtimony of two credible Witneſſes, that he hath attempted " ſuch Proceſſes in the Court of *Rome*, That then ſuch Inſtrument and " Teſtimony be there entered, and Proclamation thereupon made, as " well in your *Chancery* as at the Benefice concerning which the De- " bate ſhall be, to appear perſonally within half a Year next enſuing " within the ſame *Chancery*, as well themſelves as their Procurators, " Notaries, Fautors, Agents, Maintainers and Receivers, to anſwer and " be tried for their ſaid Offences in ſome of your Courts, or the Courts " of your Heirs, or at the Suit of the Party grieved:

" To the End that, if they come not within half a Year, as aforeſaid, " to be juſtified, then ſuch Proviſors, their Procurators, Agents, Nota- " ries, Maintainers and Receivers, be accounted as convict, and in- " cur the Pains contained in the Statutes aforeſaid.

" And that no Letters of Licence by You or your Heirs granted or " to be granted to any ſuch Perſon, to make ſuch Proſecutions or any

" Charter of Pardon, be granted to ſuch Proviſors, their Procurators, " Agents, Notaries, Fautors, Maintainers and Receivers: And that ſuch " Letters of Licence or of Pardon be not available or allowable to them " or any of them, 'till ſuch Time as they make full Satisfaction and " Reſtitution to the Parties grieved, and to every of them, of their " Loſſes in all reſpects.

" And moreover, That You and your Heirs may have for the Lives " of ſuch Proviſors, their Agents, Notaries, Procurators, Fautors and " Receivers ſo convicted, the Profits and Fruits of all their other Be- " nefices and Poſſeſſions for their Lives, to be amounted to for the " ſame by your Eſcheators in the Counties where their Benefices and " Poſſeſſions are.

" And moreover, That they find ſufficient Surety that they will not " in Time to come attempt in any Court beyond the Sea contrary to " this Ordinance.

" And laſtly, That this Ordinance may extend as well to the Time " paſt as to come.

" RESPONSIO.

" *Soient les Statutes ent faitz tenuez & gardez.*

" Saving always to our Lord the King his Prerogative and Li- " berty;

" And alſo the Moderation to him reſerved in ſuch Caſe by Par- " liament.

Hitherto out of the Entry made in the Parliament Roll.

To which I will add another Petition of the Commons made in the Parliament held 9 *Hen.* IV.

" *Item*, Whereas by divers Ways and Means the Money of the King- " dom of *England* had been drawn out of the ſame in the Court of " *Rome* in Exchange, by Proviſors, to purchaſe Proviſions from the " Pope, and Tranſlations and Biſhopricks, to the great Impoveriſh- " ment of the ſaid Kingdom; Cauſing alſo very great Rancour ..... " ..... and divers Debates in all Parts of the ſaid Kingdom, about " ſuch Proviſions executed, ſometimes by Licence granted by the King's " Letters Patents, and ſometimes by Pardons granted after Sub-provi- " ſions obtained, by ouſting them that were Incumbents of ſuch Bene- " fices by ordinary Titles, *viz.* by Preſentments and Collations of the " very Patrons; to the utter Diſheriſon of ſuch Patrons, and great " Peril of the Souls of ſuch Proviſors.

" And that it was ſhrewdly to be ſuſpected, that their Proviſions " were moſt commonly made by Simony rather than graciouſly.

" The

" The Commons therefore prayed the King to ordain and finally " eſtabliſh in that Parliament, by Aſſent of the Lords Spiritual and " Temporal,

" That all the Statutes made againſt Proviſors from the Court of " *Rome*, Tranſlations of Archbiſhopricks and Biſhopricks, their Agents, " Procurators, Notaries, Fautors, Maintainers, and Receivers, as well " in the Time of *Edward* his Grandfather late King of *England*, as in " the Time of the late King *Richard*, as in his own Time, with all " the Penalties and Clauſes therein, might from that Time forward be " firmly kept and held in all Points.

" *La Moderation de Statutes a vant ditz avous avant ces heurs* " *grantez non obſtantz*; *i. e.* The Moderation of the ſaid Statutes to " him theretofore granted notwithſtanding.

" Pardoning alſo by Authority of Parliament all them that purchaſed " Proviſions, and had purchaſed and executed Tranſlations of Arch- " biſhopricks or Biſhopricks, before the then 1ſt Day of *December*, all " manner of Treſpaſſes, Contempts, Forfeitures and Miſpriſions, and " whatever to him appertained in that behalf; and to all their Procu- " rators, Notaries, Fautors, and Executors.

" And moreover, to ordain in that Parliament, That all Elections of " Archbiſhopricks, Biſhopricks, Abbacies, Deanaries, Priories, and o- " ther Dignities Elective whatſoever, might for the Time to come be " free, without being in any manner diſturbed by the Pope, or the " King's own Command.

" To which the King anſwered,

" *Le Roy le voet.*

" Saving always, That our ſaid Lord the King have as freely his Li- " berty and Prerogative as any of his noble Progenitors have had here- " tofore, or as himſelf had at that Time before the making of this " Statute."

Having thus given theſe two Acts, I come to apply them to the grand Cauſe.

And by the Firſt Act it appears,

1. That the Commons declare, That all Proviſors, by Authority of the Pope, and all Proceſs and Proceedings thereupon, were contrary to the Laws of the Crown and of the Kingdom.

2. They pray, That no Letters of Licence nor *Non Obſtantes*, which had been or ſhould be granted by the King or his Heirs, do make any ſuch Proſecutions.

3. Nor that they ſhould be available or allowable, 'till full Satiſfaction and Reſtitution were made in all reſpects to the Parties aggrieved.

But

But if the King's Prerogative was ever known to be ſuch, that no Act of Parliament could (to uſe the Words of the Sages of the Law) reſtrain him *in Theſi* or *Hypotheſi*, but he might diſpenſe with it;

How, I pray, came it to paſs, that the Commons ſhould trouble themſelves, the Lords, and the King, with ſo idle and vain a Petition?

By the Second Act it farther appears,

1. That the Commons pray a Reviver of all Statutes againſt Proviſors from the Court of *Rome:*

2. Notwithſtanding the Moderation of the ſaid Statutes, which had been granted to that King before.

3. And laſtly, They deſire that all Offenders againſt thoſe Statutes may be pardoned. But how? By Authority of Parliament.

And by the Parliament it likewiſe appears,

1. That to the Firſt Petition the King anſwered,

" *Soient les Eſtatutes ent faitz tenuz & gardez.*

2. And to the Second Petition,

" *Le Roy le voet.*

But here I muſt anſwer an Objection, which I ſee will with great Warmth be urged againſt me; *viz.*

That I have not here given the Reader,

1. The Saving of the King's Prerogative and Liberty, and alſo the Moderation reſerved to him by Parliament to the Firſt Petition:

2. Nor the Saving, that he ſhould have as freely his Liberty and Prerogative, as any of his Progenitors had, or than himſelf had before the making of the laſt Act.

And therefore I am partial.

To all which I anſwer,

That the Reaſon why I divided the King's Anſwer, was to enquire into the ancient Form of penning and publiſhing of Statutes.

It muſt be acknowledged, that the Way of ſeveral Parliamentary Proceedings was in old Times not ſo regular and formal as in after Times.

For, * before the 2d Year of King *Henry* IV. the Courſe was,

1. When the Commons were Suiters for a Law, either the Speaker of their Houſe, by Word of Mouth from them, the Lords Houſe joining with them,

2. Or by ſome Bill in Writing, which was uſually called their Petition, moved the King to ordain Laws for the Redreſs of ſuch Miſchiefs or Inconveniencies as were found grievous unto the People.

3. To theſe Petitions the King made Anſwer,

Sometimes to Part,

Sometimes to the Whole,

* *See* Ruſhworth's *Collections*, vol. 1. fol. 568, 574. *Mr.* Glanville's *Speech in a full Committee of both Houſes of Parliament*, May 23, 1627. *in the* Painted Chamber *at* Weſtminſter.

Sometimes

Sometimes by Denial,
Sometimes by Aſſent,
Sometimes abſolutely,
And ſometimes by Qualifications.

4. Upon theſe Motions and Petitions, and the King's Anſwer to them, was the Law drawn up and ingroſſed in the Statute Roll, to bind the Kingdom.

5. But this Inconvenience was found in this Courſe, that oftentimes the Statutes thus framed were againſt the Senſe and Meaning of the Commons, at whoſe Deſires they were ordained. And therefore,

6. *Anno* 2. *Hen.* V. the Commons having found by ſad Experience, that the Courſe tended to the Violation of their Liberty and Freedom, whoſe Right it was and ever had been, That no Law ſhould be made without their Aſſent: They then exhibited a Petition to the King, declaring their Right in this Particular, praying, That from thenceforth no Law might be made or ingroſſed as Statutes, by Additions or Diminutions to their Motions or Petitions, that ſhould change their Senſe or Intent, without their Aſſent.

7. Which was accordingly eſtabliſhed by Act of Parliament.

8. And ever ſince then the Uſe hath been, as the Right was before, that the King takes the whole or leaveth the whole of all Bills or Petitions exhibited for the obtaining of Laws.

But it may be aſked, Where is that Act of Parliament to be found, ſince it is not to be met with in our printed Statute Books?

To this I anſwer,

That there are Numbers of publick Acts of Parliament, which concern the ancient Government of the Kingdom, that no where appear either in our Statute Books or other Books of Law; and yet are very neceſſary to be known, to detect and confute the many groſs Fallacies and dangerous Errors, which have been ſo artificially and with ſo great Boldneſs impoſed upon this latter Age, by corrupt Lawyers, Divines, and Phyſicians the worſt of Seducers.

And the Reader will find that Act of Parliament entered upon the Parliament Roll. And thus it follows:

" *Item, Fait a remembrer que les Comens baillerent a Roy noſtre* " *Seigneur treſſoveraigne en c'eſt Parlement un petition, dont le tenure* " *enſuit de mote en mote.*

" Our Soverain Lord,

" Your humble and true Lieges, that been come for the Comens of " your Land, beſechen unto your ritz Wiſeneſs,

" That ſoo as hit hath ever be thair Libertie and Freedom, that there " ſhould noe Statute, nor Law be made of laſſe than thay yaf thereto

" thair Aſſent; conſidering that the Comens of your Lond, the which " that is and ever hath be a Member of your Parliament, been as " well

" 1. Aſſentirs,

" 2. As Petitioners,

" That from this Time foreward, by Compleint of the Comens of " any Miſchiefe as being Remedy, by Mouth of thair Speker for the " Comens, other elſe by Petition witten that there never be noe Law " made thereupon and ingroſſed as Statute and Law, neither by Addi- " tions neither by Diminutions, by noe manner of Terme ne Termes, " the which ſhuld change the Sentence of the Intent aſked by the Spe- " ker Mouth, or the Petition by foreſaid geven up in Wryting by the " manner foreſaid, without Aſſent of the foreſaid Comens.

" Conſidering our foreſaid Lord that is not in ne will the Entent of " your Comens, yif it be ſe that they axke you by ſpeking or by wry- " tying too Things or three, or as many as them liſt; but that ever " it ſtout in the Freedome of your high Regalie, to grant which of the " too you luſt, and to wecune the remanent.

" ANSWER.

" The King of his Grace eſpecially granteth, that fro thence forth " nothing be enacted to the Petition of his Comens that be contrary " of his axking what by they ſhould be bound without thair Aſſent.

" Saving alway to our Liege Lord his real Prerogatif to grant and " deney what him luſt of your Petitions and Axking aforeſaid."

By this Act the old Courſe of making Laws was altered and changed, and that too much for the better.

For before, many Inconveniences happened to the Subject, occaſioned by the Artifice of the King's Counſel, who in thoſe Days were intruſted with the penning and publiſhing of the Statutes after the Parliament ended. For,

1. Sometimes no Statute was made, although it had been generally agreed in Parliament.

2. Several Particulars aſſented to by the King, were left out and omitted.

3. Many Things were added in the drawing up of the Law, which were not in the Petition of the Commons.

4. A pretended Statute was publiſhed, whereunto the Commons never gave their Conſent.

5. And laſtly, another pretended Statute was made, which neither the Lords nor Commons aſſented to.

It would be too great a Digreſſion to enter into a long Diſcourſe upon theſe particular Heads in this Place, and therefore I will reſerve it for another Tract.

All that I ſhall inſiſt upon for the preſent is in brief this:

That it is no concluding Argument to ſay, that becauſe we read of Saving of the King's Prerogative in Acts of Parliament before the 2d of *Henry* V.

That therefore thoſe Savings were in the Petitions which produced thoſe Laws, and conſequently were ſo many Recognitions made in Parliament of his Prerogative in thoſe Caſes, of which the Statutes ſpeak.

But it is a good Argument to ſay, that the King's learned Council were ſtrongly of Opinion, that, if they had not added ſuch Savings, the Prerogative Royal had been abſolutely bound; and that no *Obſtantes*, then in Uſe and Practice, could diſpenſe with it: For otherwiſe, what could a Saving ſignify?

The Concluſion of my Anſwer to the foreſaid Objection muſt then be,

That the King's Anſwer, *viz.* "*Soient les Eſtatutes ent faitz tenuz* "*& gardez*," given to the firſt Petition; and "*Le Roy le voet*," given to the Second Petition, were the original Anſwers given by the King, with the Aſſent of the Lords in Parliament.

And that the Saving of the King's Prerogative and Liberty, and alſo of the Moderation reſerved to him by Parliament, was afterwards added by the King's Council, when the Statute was drawn up, and an Entry made in the Parliament Roll.

And to inforce this Concluſion, the Parliament Roll, 8 *Hen.* IV. proves, "That it was enacted, at the Requeſt of Sir *John Tibitot*, then "Speaker, in the Name of the Commons, That certain of the Houſe "of Lords and of the Commons Houſe ſhould be *a l'enactement* & "*l'engroſſement du Roll de Parlement*." Rot. Parliam. 8 Hen. 4. N° 65. Seigneurs & Communes aſſignes pur l'engroſſement de Roll du Parlement.

But our Taſk is not yet done; for there remains another Petition to the Commons behind, which cannot well be paſſed by.

It was in the Parliament held 3 *Hen.* V. ..... in theſe Words:

"*Item*, Whereas in the Time of King *Henry* IV. Father to our "Sovereign Lord, whom God forgive, the 7th Year of his Reign, to "eſchew many Diſſenſions, Diſcords, and Debates, and divers other "Miſchiefs, which were likely to ariſe and happen becauſe of many "Proviſions then made, or to be made to the Pope; and alſo becauſe "of many Licences thereupon [granted] by the ſaid late King; amongſt "other Things it was ordained and eſtabliſhed, That no ſuch Licence Rot. Parliam. 3 Hen. V. p. 1. N° 35.

"or

" or Pardon ſo granted before the ſaid Parliament, nor after to be " granted, ſhould be available to any Benefice full of any Incumbent, " at the Day of the Date of ſuch Licence or Pardon granted.

" Nevertheleſs ſo it is, moſt Liege Lord, That contrary to the good " Intention of the making of the ſaid Ordinance and Eſtatute, and di- " vers other Ordinances and Statutes heretofore made againſt *Proviſors*, " divers Perſons having Proviſions of the Pope of divers Benefices in " *England* and elſewhere, and Licence Royal to execute the ſaid Pro- " viſions, have by Colour of the ſame Proviſions, Licences, and Ac- " ceptations of the ſaid Benefices, ſubtily excluded divers Perſons of " their Benefices, in which they have been Incumbents, by a long Sea- " ſon of the Collations of the very Patrons ſpiritual to them daily made " to their Intent.

" May it pleaſe,

" By Advice and Aſſent of the Lords Spiritual and Temporal,

" To ordain by Statute, That all Incumbents of whatſoever Bene- " fices of Holy Church, of the Patronage, Collation, or Preſentation of " Spiritual Perſons, may peaceably and quietly enjoy and ſhall enjoy " their ſaid Benefices, without being inquieted, moleſted, or in any way " grieved by any Perſons, by Colour of ſuch Proviſions or Licences " and Acceptations whatſoever.

" And that all the Licences and Pardons upon and by ſuch Provi- " ſions made in any manner, ſhall be void and of no Value.

" And if any feel himſelf grieved, moleſted or inquieted in any wiſe " from henceforth, by any Perſon or Perſons, by Colour of ſuch Pro- " viſions, Licences, Pardons and Acceptations, that the ſame Moleſters, " Grievers and Inquieters, and every of them, ſhall ſuffer and incur " the Pain and Puniſhment contained in the Statute of *Proviſors* before " this Time made and contained; and that by Proceſs of *Premunire* " *facias* formed upon the Caſe.

" And laſtly, That the Party, which ſhall ſue by the ſame Writ, " ſhall recover his treble Damages in the Defendants Names in the " ſame Writ, if any of them be convict in that behalf.

RESPONSIO.

" *Le Roy le voet.*

Now he that will conſider this Law with Caution and Obſervation, muſt confeſs, that it wholly alters the Caſe with relation to the King's diſpenſing Power touching the Statute of *Proviſors*. For,

1. As it explains the Statute of 7 *Hen.* IV. it proves, That the Saving of the King's Prerogative mentioned therein was plainly an Addition made by the King's Council, and no Part of that King's Anſwer, becauſe there is not the leaſt mention made thereof in this Act, in the Recital of the former.

2. All

2. All the former Savings and Moderations are here left out; *Hen.* V. gives a full and clear Anſwer to this, *viz. Le Roy le voet.*

3. So as now all Colour of the King's Power of granting Licences and Pardons touching Proviſions from *Rome*, being abſolutely taken away by this Statute, the Statute of 16 *Richard* II. after ſo many Years Interruption, was revived and reſtored to its full Force and Virtue.

And laſtly, from the ..... of what Authorities I have but as yet given againſt *Non Obſtantes*,

I conceive it will be very evident to all unbyaſſed and impartial Readers,

That the firſt Invention of *Non Obſtantes* is no Part of the wiſe and ancient Conſtitutions of this Nation, nor any natural Branch of the Common Laws, but an Excreſcence grown up by Time and ill Conduct, which hath not only brought Deformity, but Danger, to the Laws of the Kingdom;

Let our modern Report Books tell us what they pleaſe.

The Ninth Authority.

A Queſtion was preſented to the King in the Parliament 10 *Hen.* VI. *per Communitates Regni Angliæ*, on the Behalf of *Henry* Biſhop of *Wincheſter*, Cardinal of *England*, the King's Uncle, in Form as followeth: Rot. Parliam. 10 Hen. VI. No. 16. Pro Dom. Cardinal. Angl.

Item, " The Commons pray, That it may pleaſe your moſt gra-
" cious Seigniory, conſidering the very great and notable Services and
" Offices of ſo near a Relation, heretofore due and performed, as well
" to yourſelf as your moſt noble Father, whom God aſſoile, by the
" moſt reverend Father in God, *Henry Beaufort*, Prieſt Cardinal, with
" the Title of St. *Euſebie*, Biſhop of *Wincheſter*, to ordain and grant,
" *Per aſſent des Seigneurs Spirituelx & Temporelx*,
" in this your preſent Parliament, and by Authority of the ſaid Par-
" liament,

1. " That neither the ſaid *Henry*, Cardinal, by what Name ſoever he
" the ſaid *Henry* be called, nor any other Perſon, be proſecuted,
" vexed, impleaded, or grieved, by You, your Heirs, or Succeſſors,
" Kings of *England*, nor by any other Perſon, by reaſon of any Pro-
" viſion, or other Offence or Miſpriſion done by the ſaid *Henry*, contrary
" to a Statute of *Proviſions*:

2. " Or by reaſon of any Exemption, Receipt, Acceptance, Admiſ-
" ſion, or Execution of any Papal Bulls, to him in any wiſe made.

3. " But that the ſaid *Henry*, Cardinal, and all other Perſons, may
" by the ſame Authority be quit and utterly diſcharged againſt You,
" your Heirs, and Succeſſors, of all ſuch Actions, Proſecutions, Im-

" peachments and Vexations, and of all Offences againſt your Laws " upon this Account, for the Cauſe aforeſaid.

4. " And of all other Actions and Proſecutions, whereby any Puniſh- " ment like to that contained in the Statutes of *Proviſions* might come " and ariſe, and of every of them.

" And that all Suits, Actions, and Proſecutions againſt the ſaid " *Henry*, Cardinal, and all other Perſons, for the Cauſes aforeſaid, be " extinguiſhed, quaſhed, made null, and void.

" And that You, your Heirs, and Succeſſors, may by the ſame Au- " thority be for ever foreclosed and excluded from having or proſe- " cuting any manner of Intereſt, or any manner of Actions for the " Cauſe aforeſaid, againſt the ſaid *Henry*, Cardinal, or any other Per- " ſon, any Statute or Ordinance to the contrary thereof made notwith- " ſtanding."

Which Petition having been read, heard, and fully underſtood in the ſaid Parliament, and mature Deliberation being thereupon had, was thus anſwered:

De aviſamento & aſſenſu Dominorum Spiritualium & Temporalium then and there preſent;

Fiat, prout petitur, quantum ad prædictum Cardinalem & omnes alios qui occaſiones ipſius Cardinalis impeti poterunt vel implacitari.

Now he that conſidereth all the Circumſtances of this Authority, and the ſeveral Conſequences that may eaſily be drawn from it, cannot well ſuppoſe that the Judges in *Weſtminſter Hall* had in thoſe Times diſcovered ſuch a Secret in Law, that it was *inter Jura Majeſtatis*, to diſpenſe with publick Statutes, or to ſuſpend in general the Execution thereof.

The Tenth Authority.

Dr. Burnet's Hiſtory of the Reformation of the Church of *England*, in his Collection of Records, Book 2. fol. 98, 99, 101. part 1.

" Pope *Martin*, in the 10th Year of his Pontificate, by a Bull ſent to " the then Biſhop of *Canterbury*, in the Reign of King *Henry* VI. taking " notice of the Statute of *Proviſors*, as a Statute *quod Statuta Dei & Ec-* " *cleſiæ deſtruit*, and that *per illud execrabile Statutum ita Rex Angliæ de* " *Eccleſia cum Proviſionibus & Adminiſtrationibus diſponit, quaſi Vicarium* " *ſuum Chriſtus eum inſtituiſſet:* As a Statute made *ſuper Eccleſias, Bene-* " *ficia, & Clericos & Eccleſiaſticum Statum, — quaſi Rex Eccleſiæ claves* " *in manibus haberet, & non Petro, ſed ſibi hujuſmodi cura commiſſa foret:* " As a Law inflicting *vipereas contra Clericos pœnas, viz. Executores Lite-* " *rarum Apoſtolicarum, Procuratores, Notarios, & quoſcunque alios cenſu-* " *ram ſeu proceſſum ab Apoſtolica ſede in regnum mittentes aut deferentes,* " enjoins him upon his Canonical Obedience, and upon Pain of Excom- " munication, to reſort to the King's Council, and there to perſuade and " admoniſh them all, the Eccleſiaſticks as well as the Laicks, to procure " a Repeal of the ſaid Statute in the next Parliament, as a Statute that

" was

" was contrary *divinæ & humanæ rationi, veteris & novi Teſtamenti, Con-*
" *ciliorum, ſanctorum Patrum, ſummorum Pontificum decretis, ipſius de-*
" *nique univerſalis Eccleſiæ obſervantiæ*; and a Statute, that *non ſine in-*
" *teritu ſalutis æternæ quovis modo ſervari poteſt.*

" By the ſame Bull he recommended the Archbiſhop to uſe the like " Inſtances with all that had Votes in Parliament, when a Parlia-" ment ſhould be called.

" He commanded him further to enjoin all Prieſts to inſtruct their " Auditors concerning the Premiſſes.

" Two Months before this Bull bears Date, there was a Letter ſent " from the Pope to the King, and another to the Parliament, to the " ſame End and Purpoſe.

" In the Letter to the King the Pope tells him, That after many " other Meſſengers ſent to his Highneſs for that Purpoſe, at laſt he had " ſent *Magiſtrum Julianum, cauſarum Curiæ Cameræ Apoſtolicæ audi-*" *torem*, for the ſame Cauſe, by whom the King had formerly returned " this Anſwer: That as ſoon as conveniently he could he would " call a Parliament, *ſine quo idem nequit aboleri Statutum*; and in that " Parliament would do all he could to fulfil his (the Pope's) Requeſt; " and then urges him to keep his Word for the Salvation of his own " Soul, and thoſe of many others, offering Expedients to prevent any " Miſchiefs that might ariſe to the Kingdom by the taking away of " the ſaid Statute.

" In his Letter to the Parliament he tells them, That by many Meſſengers " and frequent Exhortations, according to the Duty of his Paſtoral Of-" fice, he had admoniſhed them and the whole Kingdom, for the Salva-" tion of their Souls, and the Honour of the Realm, to aboliſh that de-" teſtable Law, which could not be kept without eternal Damnation.

" And that becauſe it could not be taken away without a Parliament, " as the King had written to him, and becauſe the King had promiſed " to call one with all convenient Speed, and do what was poſſible for " him to do, towards the fulfilling of his (the Pope's) Requeſt;

" And ſince he was given to underſtand that the Seſſions of Parlia-" ment was approaching, he exhorted, admoniſhed, and beſought them, " that having an unanimous Regard to the Salvation of their Souls, and " the Purity of their Conſciences, before all other things, they would " take away, and for ever aboliſh, that *Statutum abominabile.*

" And if any Man, whether Secular or Eccleſiaſtical, ſhould perſuade " them to the contrary, not to hear him, but to look upon him as an " Enemy to their Souls, and to their Honour; nor to account him a " Catholick, that ſhould preſume to attempt any thing againſt the Autho-" rity of the Church of *Rome*, and the Rights and Privileges granted by " God to the Apoſtolick See, which their King himſelf had publickly " proteſted that he would derogate nothing from: Further admoniſhing " them not to be withdrawn from this Catholick Doctrine upon Pre-

" tence

" tence of any temporal Damage that might enſue, and offering an " Equivalent in theſe Words: *viz. Ecce nos promptos paratoſque of-* " *ferimus omnibus cauſis, propter quas dictum Statutum conditum eſſe* " *prætenditur, ſalubriter providere, ita ut nec regno nec cuiquam pri-* " *vatæ perſonæ præjudicium aliquod ex ipſius Statuti abolitione poſſit* " *accidere.*

" The Archbiſhop of *Canterbury*, purſuant to the Pope's Command, " having applied himſelf vigorouſly both to the King and the Lords, to " induce them to repeal the Statute of *Proviſors*;

" He, together with the Archbiſhop of *York*, and ſeveral other Bi- " ſhops, and ſeveral other Prelates, went down to the Houſe of Com- " mons, where being received, the Archbiſhop made a Speech to the " Houſe.

" He firſt proteſted, That neither he nor his Brethren intended, *Do-* " *mino Regi Angliæ aut Coronæ ſuæ, vel Communitati ſuæ in aliquo* " *derogare.*

" And then taking this Theme, *Reddite quæ ſunt Cæſaris Cæſari,* " *& quæ ſunt Dei Deo,*

" He proceedeth to declare at length, what Things belonged to the " Eccleſiaſtical Juriſdiction, and what to the Temporal; perſuading the " Houſe by ſeveral Arguments taken from *Jura nonnulla & ſacræ* " *Scripturæ auctoritate convenientes*, to aboliſh the ſaid Statute of " *Proviſors.*

" And alſo repreſenting to them the great Pains and Coſts that the " Pope had been at in ſending Ambaſſadors and Meſſengers, *ad proſe-* " *quendum jus ſuum & Eccleſiæ libertatem,*

" He beſought the Houſe in his own Name, and in the Name of " all the Prelates of Parliament, both preſent and abſent, That they " the Commons, for the Salvation of their Souls, and the Proſperity " and the Peace of the whole Kingdom, would conſider of the Pre- " miſſes, and take ſuch Courſe therein, as might appeaſe the Pope; " and as he might have cauſe to commend the King's Zeal and the " Kingdom's Devotion in that behalf.

" Adding farther with Tears, the Dangers that would accrue to the " King and Kingdom by Eccleſiaſtical Cenſures, and the Thunder of " Interdict, in caſe the Parliament ſhould not return the Pope a ſatiſ- " factory Anſwer.

" Beſides, he declared to them, That the Pope in divers Bulls had " promiſed that himſelf and the Apoſtolick See would provide Reme- " dies to anſwer the Cauſes and Occaſions of making the ſaid Statute, " and wholly remove and take away all the Grievances that had in- " duced the Parliament to make ſuch a Law.

" All which being ſaid, the Archbiſhop and the reſt of the Prelates " departed out of the Houſe of Commons, and left them to deliberate " the Matter,

From

From what has been ſaid, it may be obſerved,

OBSERVATIONS.

1. That the Statute of *Proviſors* was in the Judgment of the Pope and all the Clergy of *England*, a Penal Law concerning Eccleſiaſtical Matters.

2. That the Pope had prevailed with the King to give his Conſent for repeal of the ſaid Statute beforehand.

3. That the King wrote to the Pope, that the Statute could not be aboliſhed but in Parliament; and therefore promiſed to call a Parliament, and do his utmoſt to gratify the Pope therein.

From whence I infer, That if the King could then by his Prerogative Royal have ſuſpended that general Law, no doubt but he would have done it; and that would have ſerved the Pope's Turn, ſo as he needed not to have been at ſo much Trouble and Charge to prove the Repeal of it in a Parliament.

The Eleventh Authority.

In the Parliament 25 *Henry* VIII. a Statute was made, That no Impoſition ſhould be paid to the Biſhop of *Rome*, wherein it is declared thus as followeth, *viz.*

Pulton's Stat. 25 Hen. VIII. cap. 21.

" That where the Subjects of this your Realm, and of other Coun-
" tries and Dominions being under Obeyſance by many Years paſt, have
" been and yet be greatly decayed and impoveriſhed by intolerable Ex-
" actions of great Sums of Money as have been claimed and taken, and
" continually be claimed to be taken out of this your Realm and other
" your ſaid Countries and Dominions, by the Biſhop of *Rome* called
" the Pope, and the See of *Rome*; as well in Cenſes, Peter-pences, Pro-
" curations, Fruits, Suits for Proviſions and Expeditions of Bulls for
" Archbiſhopricks and Biſhopricks, and for Delegacies and Reſcripts
" in Caſes of Contentions and Appeals, Juriſdictions Legative; and
" alſo for his Diſpenſations, Licences, Faculties, Grants, Relaxations,
" Writs called *perinde valere*, Rehabilitations, Abolitions, and other
" infinite Sorts of Bulls, Briefs, and Inſtruments of ſundry Natures,
" Names and Kinds, in great Numbers heretofore practiſed and ob-
" tained, otherwiſe than by the Laws, laudable Uſes and Cuſtoms of
" this Realm, ſhould be permitted; the Specialities whereof be
" ever long, large in Number, and tedious here particularly to be in-
" ſerted; wherein the Biſhop of *Rome* aforeſaid hath not been not
" only to be blamed for his Uſurpation in the Premiſſes, but alſo for
" his abuſing and beguiling your Subjects, pretending and perſuading
" them, *That he has Power to diſpenſe with all human Laws, Uſes*
" *and Cuſtoms of all Realms, in all Cauſes which be called Spiri-*
" *tual.*

" Which Matter has been uſurped and practiſed by him and his Pre-
" deceſſors by many Years; in great Derogation of your Imperial Crown
" and Authority Royal, contrary to Right and Conſcience.

" For where this your Grace's Realm, recognizing no Superior un-
" der God but only your Grace, hath been and is free from Sub-
" jection to any Man's Laws, but only ſuch as have been adviſed, made,
" and obtained within this Realm, for the Wealth of the ſame, or to
" ſuch other as by Sufferance of your Grace and your Progenitors, the
" People of this your Realm have taken at their free Liberty, by their
" own Conſent, to be uſed amongſt them; and have bound themſelves
" by long Uſe and Cuſtom to the Obſervance of the ſame.

" Not as to the Obſervance of the Laws of any Foreign Prince,
" Potentate, or Prelate:

" But as to the cuſtomed and ancient Laws of this Realm, originally
" eſtabliſhed as Laws of the ſame by the ſaid Sufferance, Conſents and
" Cuſtom, and none otherwiſe.

" It ſtandeth therefore with natural Equity and good Reaſon, that
" all and every ſuch Laws human made within this Realm, or induced
" into this Realm, by the ſaid Sufferance, Conſents and Cuſtom;

" 1. Your Royal Majeſty,

" 2. And your Lords Spiritual and Temporal,

" 3. And Commons,

" repreſenting the whole State of your Realm, in this your Moſt High
" Court of Parliament, have full Power and Authority not only to diſ-
" penſe, but alſo to authorize ſome elect Perſon or Perſons, to diſpenſe
" with thoſe and all other human Laws of this your Realm, and with
" every of them, as the Quality of the Perſons and Matter ſhall re-
" quire.

" And alſo the ſaid Laws and every of them to abrogate, annull, and
" amplify or diminiſh, as it ſhall be ſeen,

" 1. Unto your Majeſty,

" 2. And the Nobles,

" 3. And Commons of your Realm,

" preſent in your Parliament, mete and convenient for the Wealth of
" your Realm:

" As by divers good and wholſome Acts of Parliaments, made and
" eſtabliſhed as well in your Time as in the Time of your moſt Noble
" Progenitors, it may plainly and evidently appear.

This ſolemn Declaration of the antient and famous Government of *England*, is grounded upon ſuch a ſure and ſolid Ground as commands Relief, and forbids us to queſtion the Truth of it.

Beſides, it proves that the Practice of former Times, and the Judgments of Parliaments, were directly againſt the New Doctrine of the Suſpending Prerogative.

For

For we ſee where the full Power and Authority of diſpenſing with the Laws of the Realm, as the Publick Good and Safety of the People or emergent Neceſſity required, were lodged and intruſted, Not in the Reſolutions of any or all the Judges of *Weſtminſter Hall:* But,

1. In his Royal Majeſty,
2. The Lords Spiritual and Temporal,
3. And Commons,

repreſenting the whole State of the Realm in the High Court of Parliament.

It therefore is a mere Fallacy to affirm, as ſome of our modern Lawyers have done, That to place that Power in any other than in the King alone, ſo as to make ſome others to be Sharers in that Power, was to make thoſe others to be Sharers in the higheſt Act of Sovereignty, and conſequently to ſhare in the Crown.

The Twelfth Authority.

There was another Act made in the 28th of *Henry* VIII. for the Releaſe of ſuch as had obtained pretended Licences and Diſpenſations from the See of *Rome.* Wherein among other Things it was enacted,

" That all Archbiſhops and Biſhops of this Realm, or of any the " King's Dominions conſecrated, and at that time taken and reputed " for Archbiſhops and Biſhops, ſhould

" By Authority of that Parliament,

" And not by virtue of any Proviſion or other foreign Authority, Li- " cence, Faculty or Diſpenſation, keep, enjoy and retain their Arch- " biſhopricks and Biſhopricks, in as large and ample manner as if " they had been promoted, elected, confirmed and conſecrated, accord- " ing to the due Courſe of the Laws of this Realm.

" And that every Archbiſhop and Biſhop of this Realm, and of other " the King's Dominions, ſhould miniſter, uſe and exerciſe, all and e- " very Thing and Things pertaining to the Office or Order of an " Archbiſhop and Biſhop, with all Tokens, Enſigns and Ceremonies " thereunto lawfully belonging.

" And that all Eccleſiaſtical Perſons of the King's Realms and Do- " minions, which at that Time were taken, had and reputed for Ab- " bots, Priors, Abbeſſes, Prioreſſes, and other Heads of Religion, " which then were not, neither ſhould be, excluded from their Digni- " ties by the late Act of Suppreſſion; and the Religious Perſons then " living under their Obedience, and all Perſons then taken and reputed " as Maſters, Preſidents, Provoſts, and Wardens of Cathedral Churches " and Colleges, with the Companies and Fellowſhips of the ſame; " all Prieſts and Clerks which had received any the Eccleſiaſtical

" Orders,

" Orders, all Archdeacons and Deans, and other having Offices, Cures " and Dignities Spiritual, might,

" By Authority of this Act,

" And not by the Virtue of any foreign Power or Authority, admi- " niſter, uſe, and exerciſe all things pertaining to their Dignities, Offi- " ces, Orders, Cures, Religions and Fellowſhips, and might lawfully " thereafter uſe all Tokens, Enſigns, and Ceremonies, which they had " been accuſtomed to uſe in Times paſt.

" So it were not expreſly againſt the Law of God and this Realm, " any Thing or Things, contained in any Act or Acts, made ſithence " the Beginning of that Parliament, to the contrary of any the Pre- " miſſes in any wiſe notwithſtanding."

After which the Statute goes on thus:

" And where divers and many of the King's Subjects had purchaſed " and obtained many Diſpenſations, Bulls, Breves, and Faculties of the " Biſhop of *Rome* for the Time being, or by the Authority of the " See of *Rome*, as Pluralities, Unions, Trialities, Appropriations, Com- " mendams, Exemptions, and other Bulls, Breves, and Faculties, for " divers Cauſes and Matters, other than before expreſſed, which were " of no Strength or Virtue.

" It was enacted,

" By the Authority aforeſaid,

" That all and every the ſaid Subjects, during the Time of one " one whole Year next after the Feaſt of *St. Michael the Archangel* " next coming, might enjoy, uſe, and have,

" By Authority of that Act,

" And not by Virtue of the ſaid Bulls, Breves, and Faculties, all and " every the Effects contained and ſpecified in ſuch Bulls, Breves, and " Faculties, in all ſuch Caſes only as might be diſpenſed with by the " Archbiſhop of *Canterbury*, by Authority of the Laws and Statutes " of this Realm.

" And it was further enacted,

" That all and every the King's ſaid Subjects, bringing, rendring, " and delivering to ſuch Perſons of his Council, or of the Maſters of " his Chancery as the King's Highneſs ſhall name and appoint, any " Bulls, Breves, or any other Faculties concerning any the Premiſſes:

" That then if it ſhould appear to ſuch Perſons as the King's High- " neſs ſhould ſo name and appoint to receive ſuch Bulls, Faculties, " and Breves, after due Examination thereof made, that the Effects " contained and ſpecified in ſuch Bulls, Faculties, and Breves, or any " Part thereof, might be lawfully granted by the ſaid Archbiſhop of " *Canterbury*,

" By Authority of the Laws and Statutes of this Realme:

" That then and in every ſuch Caſe, the King's ſaid Subjects making " humble Suit to have Effects contained in the ſaid Bulls, Breves, and

" Faculties,

" Faculties, ſo to be granted to them, ſhould have, receive, and ob-
" tain of the Chancellor of *England*, or Keeper of his Great Seal for
" the Time being, by ſufficient Writing in due Form to be made, and
" ſo to be ſealed under the King's Great Seal, all and every ſuch Ef-
" fects contained and ſpecified in ſuch Bulls, Breves, and Faculties, as
" might be lawfully granted by the ſaid Archbiſhop of *Canterbury*,

" By Authority of the Laws and Statutes of this Realm,

" Paying only for the ſealing of every ſuch Writing 20 *s.* 4 *d.*

" And over that for the reaſonable Coſts for Pains of the writing
" thereof 3 *s.* 4 *d.* and not above.

" And for the Pains taken for due Examination of every ſuch
" Bulls, Breves, and Faculties, 3 *s.* 4 *d.* and not above.

" And alſo it was ordained, that that Act ſhould be a ſufficient
" and immediate Warrant to the Chancellor, or Keeper of the Great
" Seal, for the Inſealing and Delivery of ſuch Licences, Faculties,
" Diſpenſations, and other Writings which ſhould be made, granted,
" and ſealed under the King's Great Seal,

" By Virtue and Authority of that Act.

" And laſtly it was enacted,

" By Authority aforeſaid,

" That all and every ſuch Licence, Diſpenſation, Faculty, Con-
" firmation, or other Writing hereafter to be had, made, or granted
" under the King's Great Seal out of the ſaid Court of *Chancery*

" By Authority of that Act,

" In Form as is above rehearſed, ſhould be good and effectual to
" the ſaid Parties ſuing for the ſame, according to the Tenor and Ef-
" fect thereof; and ſhall be admitted, accepted, and allowed in all
" Courts and Places of this Realm, and in all other the King's Do-
" minions.

" Any Uſage, Preſcription, foreign Laws, Cuſtoms, or Ordinances
" to the contrary thereof notwithſtanding."

Now as this Act is a publick Declaration of the unlimited Authority and Juriſdiction of the Supreme Court of the Kingdom, the Parliament, as well in ſpiritual as temporal Affairs, ſo it is inconſiſtent with the modern Opinions touching the King's abſolute diſpenſing Power;

And that upon theſe Reaſons following.

The Firſt Reaſon, as previous to the other, ſhall be this:

That by the Statute of 25 *Henry* VIII. the Archbiſhop of *Canterbury*, for the Time being, had Power and Authority given him to grant to the King, his Heirs, and Succeſſors, all ſuch Licences and Diſpenſations as had before that Time been uſed to be obtained at *Rome*, and alſo full Power and Authority by himſelf or his Commiſſary, to grant to any of the King's Subjects all manner of Licences and Diſpenſations that had formerly been uſed to be obtained at *Rome*. Pulton's Stat. 25 Hen. VIII. cap. 21.

This was an enabling Law, and fixed in the Archbiſhop a diſpenſing Power, which he had not before.

The Second Reaſon is,

Raſt. Stat. 28 Hen. VIII. cap. 16.

That by the Act of 28 *Henry* VIII. ſuch of the King's Subjects as had purchaſed Diſpenſations from *Rome*, were enabled, by Virtue of that Act, to enjoy, during one Year, the Effects thereof, in ſuch Caſes only as might be diſpenſed with by the Archbiſhop of *Canterbury*, by the Laws and Statutes of the Realm, and were allowed to obtain Diſpenſations from the Chancellor of *England* for ſuch Matter contained in their foreign Bulls, and as might be lawfully granted by the Archbiſhop, by the Authority of the Laws and Statutes of the Realm.

So that the Makers of the Laws, whereby all the pretended Authority of the Pope in granting Diſpenſation was abrogated, did not in the leaſt conceive (for what appeareth to me) that the King alone had any ſuch perſonal Power of diſpenſing, even in Eccleſiaſtical Matters, originally inherent in him.

For if they had known any ſuch things, it muſt have appeared very ſtrange in them to preſume to direct, appoint, and methodize the exerciſing of ſuch Prerogatives, and to concern themſelves ſo highly contrary to their Duty in the Application of it to particular Perſons and Occaſions as we ſee they did.

The Third and Laſt Reaſon ſhall be taken from the Style and Penning of this Law.

It is very obvious, that in every particular Paragraph thereof, all the Powers and Authorities thereby granted or mentioned to be granted,

1. By Authority of Parliament,
2. By Authority of that Act,
3. By Authority aforeſaid,
4. By Virtue and Authority of that Act.

And good Reaſon, ſince the Act concerned no leſs than Religion, the King, the People, their Laws and Liberties, and the moſt excellent Conſtitution in the World.

Yet after all, I deny not but that *Henry* VIII. himſelf made bold with the Statute of Proviſors.

For he made *Laurence Compegius*, the Pope's Legate, Biſhop of *Saliſbury*, and one *Jerome*, another *Italian*, Biſhop of *Worceſter*.

Dr. Burnet's Hiſtory of the Reformation, *in his* Collection of Records, Book 2. fol. 121. part 1.

But in the Act for depriving them of their Biſhopricks, made in the 25th Year of his Reign, it is declared,

" That the King,

" Having no Knowledge, or other due Information or Inſtruction " of the wholeſome Laws, Statutes, and Proviſions of the Realm,

" Had nominated, preferred, and promoted them, being Strangers, " born out of the King's ſaid Realm and Dominions, to the ſaid Sees.

" And

" And therefore, and for ſome other Cauſes, it was enacted by Autho-
" rity of Parliament,

" That the ſaid two ſeveral Sees and Biſhopricks of *Saliſbury* and
" *Worceſter*, and either of them, henceforth ſhould be taken, reputed,
" and accounted in the Law to be utterly void, vacant, and utterly de-
" ſtitute of an Incumbent or Prelate."

So that it is no falſe, virulent, and groundleſs Calumny to ſay that we have here a ſolemn Confeſſion, even of *Henry* VIII. himſelf, that he had done againſt the wholeſome Laws, Statutes, and Proviſions of the Realm; but indeed it was becauſe he had no Knowledge, or other due Information or Inſtruction thereof; a ſignal Inſtance that though the King of *England* was a Sovereign Prince, yet he had not the Laws of *England* ſo in his Power, as that by Virtue of a deſpotical Prerogative ſaid to be inherent in his Perſon, he could enervate, change, amend, or ſuſpend them all at his mere Will and Pleaſure, notwithſtanding that our late Libellers of the ancient *Engliſh* Government have confidently affirmed he might.

And this brings me to

The Thirteenth and Laſt Authority.

In the ſecond Parliament held in the 1ſt Year of Queen *Mary*, the Articles of her Marriage with *Philip* Prince of *Spain*, were confirmed as followeth:

" *An Act touching the Articles of the Queen's Highneſs's moſt noble*
" *Marriage.*

Raſt. Stat. Parliam. ſecund. Anno Mariæ 10. cap. 2.

" Whereas moſt inſtant Suit hath been made to your excellent Ma-
" jeſty on the Behalf of the moſt noble and moſt victorious Prince
" *Charles*, the Emperor of *Rome*, *&c.* and for Marriage to be had be-
" tween your Highneſs and his only Son and Heir, the noble Prince
" *Philip* of *Spain*, *&c.*

" And whereupon to the Pleaſure of Almighty God, and to the Com-
" fort of your moſt noble Perſon, and to the great and ſingular Ho-
" nour, Wealth, Benefit and Commodity of this your Realm of *Eng-*
" *land*, and of all us your moſt humble and obedient Subjects of the
" ſame,

" There hath paſſed and been concluded in two ſundry Treatiſes,
" certain Pacts and Covenants touching the ſaid Marriage, with De-
" pendances and Circumſtances of the ſame.

" And in the one Treatiſe theſe Articles:

" Firſt, it is covenanted and agreed, That as ſoon as convenient-
" ly may be, true and perfect Marriage, by Words of the Time
" preſent,

" preſent, ſhall be contracted, ſolemnized, and conſummated in *England*
" between the ſaid moſt noble Prince, and the ſaid moſt virtuous Lady
" the Queen.

" By Force of which Marriage ſo celebrated and conſummate,

" The ſaid moſt noble Prince *Philip* ſhall, during the ſaid Mar-
" riage, have and enjoy jointly, together with the ſaid moſt graci-
" ous Queen his Wife, the Style, Honour, and kingly Name of
" the Realms and Dominions unto the ſaid moſt noble Queen apper-
" taining.

" And ſhall aid her Highneſs, being his Wife, in the happy Admi-
" niſtration of her Grace's Realms and Dominions, the Rights, Laws,
" Privileges and Cuſtoms of the ſame Realms and Dominions, being
" nevertheleſs preſerved and maintained.

" And eſpecially it is provided and covenanted,

" That the ſaid moſt noble Prince ſhall permit and ſuffer the ſaid
" moſt gracious Queen his Wife to have the whole Diſpoſition of all
" the Benefices and Offices, Lands, Revenues, and Fruits of the ſaid
" Realms and Dominions.

" And that they ſhall be beſtowed upon ſuch as be naturally born in
" the ſame.

" And that all the Matters of the ſaid Realms and Dominions ſhall
" be treated and named in the ſame Tongues, wherein of old they
" have been wont to be treated, and by the natural born of the ſame
" Realms.

" It is alſo covenanted that the ſame moſt noble Queen, by Virtue of
" the foreſaid Matrimony, ſhall be admitted in the Society of the
" Realms and Dominions of the ſaid noble Prince, as well ſuch as
" he hath now preſently, as ſuch other alſo as during the ſame Ma-
" trimony may come hereafter unto him, and for her Dower, in caſe
" that her Highneſs overlive the ſaid moſt noble Prince her Huſband,
" ſhe ſhall yearly receive threeſcore thouſand Pounds, after the Value
" of forty Groats *Flemiſh* Money the Pound;

" The ſame to be allotted and appointed upon all the Realms, Lands,
" and patrimonial Dominions of the ſaid moſt victorious Lord, the
" Emperor his Father, in Manner and in Form following:

" That is to ſay, forty thouſand Pounds ſhall be aſſigned upon the
" Realms of *Spain*, *Caſtile*, and *Arragon*, and Appurtenances in their
" beſt manner that may be, and according to the Faſhion, Uſage, and
" Cuſtom of the ſaid Realms; ſo as if the ſaid noble Prince do die
" before her Highneſs, and by reaſon thereof the ſaid Dower come
" in Ure and take Effect,

" The ſaid moſt gracious Queen ſhall, and may freely, without any
" Impediment, have, uſe, and enjoy the ſaid forty thouſand Pounds,
" as is aforeſaid.

" The

" The other twenty thouſand Pounds ſhall be appointed unto her " Highneſs upon the Dukedoms, Earldoms, and Dominions of *Bra-* " *bant*, *Flanders*, *Heinold*, *Holland*, and other the primonial Lands " and Inheritance of the ſaid Lord the Emperor in the *Lower Ger-* " *many*, in like manner as the Lady *Margaret* of *England*, ſometime " Wife and Widow of Lord *Charles*, of laudable Memory, Duke of " *Burgundy*, had and received upon the ſame.

" So that the ſaid moſt noble Queen ſurviving her ſaid Huſband, ſhall " immediately, after his Death, uſe, enjoy, and poſſeſs her ſaid Dower, " ſo far forth as no Part thereof be alienated or obliged to others. " And in Caſe any Part thereof be found alienated or bound to others, " other Lands or Revenues of like Value lying near to the Reſidue of " the ſaid Dower, ſhall be in due Form aſſigned in lieu thereof with- " in the Space of three Months, which her Highneſs ſhall uſe and en- " joy in like Manner and Form as the ſaid Lady *Margaret* of *Eng-* " *land* before uſed and enjoyed.

" And leaſt that amongſt their Children there might ariſe ſome " Strife for the Succeſſion, and thereby diſturb the Fruit of perpetual " Concord that is hoped ſhall enſue of this Matrimony between the " Realms and Dominions of either Party, the ſaid Succeſſion ſhall " be ordered in Manner and Form following:

" Firſt, That as touching the Right of the Mother's Inheritance in " the Realm of *England*, and the other Realms and Dominions de- " pending of the ſame, the Children, as well Males as Females, that " ſhall be born of this Matrimony, ſhall ſucceed in them according to " the Laws, Statutes, and Cuſtoms of the ſame.

" And as touching the Lands that the ſaid moſt noble Prince ſhall " leave behind him:

" Firſt, There ſhall be reſerved unto his eldeſt Son, the Lord *Charles* " of *Auſtrick*, Infant of *Spain*, and to the Children and Heirs of " him deſcending, as well Females as Males, all and ſingular their " Rights, which to the ſaid Prince do either now, or hereafter ſhall " belong, and ſhall at any Time, by the Death either of the noble Queen " his Grandame, or the moſt victorious Emperor *Charles* V. his Fa- " ther (which God long defer) be devolved unto him in the Realms of " *Spain*, of both the *Sicilies*, with all their Appurtenances in the " Dukedom of *Milain*, and other Lands and Dominions in *Lombardy* " and *Italy*, whatſoever Name and Title they have, which never- " theleſs ſhall be burthened and charged with the foreſaid Dower of " forty thouſand Pounds.

" In which Realms, Lands, and Dominions, the Children of this " preſent Matrimony ſhall pretend nothing, ſo long as the ſaid Lord " *Charles*, the Infant, or any Iſſue of his Body lawfully begotten do " live.

" But if it fortune the ſaid Lord *Charles* to die, and the Iſſue of " his Body to fail,

" Then, and in that Caſe, the eldeſt Son of this Matrimony ſhall " be admitted unto the ſaid Right; and according to the Nature, Laws, " and Cuſtoms of the ſaid Realms and Dominions, ſhall ſucceed. The " ſame eldeſt Son, ſhall alſo ſucceed in all the Dukedoms, Earldoms, " Dominions, and primonial Lands belonging unto the ſaid Lord the " Emperor, as well in *Burgundy* as in the *Lower Germany*; that is " to ſay, in the Dukedoms of *Brabant*, *Luxembergh*, *Gelders*, *Zut-* " *phane*, *Burgundy*, *Freiſland* in the Counties of *Flanders*, *Artois*, " *Holland*, *Zeland*, *Namures*, the Land beyond the Iſles, and in all " other whatſoever thereunto belonging, or in any ways appertaining, " with all their Rights and Demands.

" But if the ſaid Lord *Charles*, or they that ſhall come of him, " ſhall remain alive, and that there be by this Matrimony any Male " Child, in that Caſe the ſaid Lord *Charles*, or his Deſcendants, ſhall " be and remain excluded from the ſaid Lands and primonial Do- " minions of the *Lower Germany*, and of *Burgundy*, and the ſame " with all their Right, ſhall deſcend to the eldeſt Son to be born of " this Matrimony:

" And to the other Children which ſhall be born of the ſaid Matri- " mony, as well Males as Females, a convenient Portion and Dower " ſhall be allotted in the Realm of *England*, and Dominions depend- " ing of the ſame, and in the ſaid Lands and primonial Dominions " of the *Lower Germany*:

" And neither the eldeſt Son of this Matrimony, nor the other Sons " begotten in the ſame, ſhall pretend any Right in the Realm of " *Spain*, or other Dominions depending of the ſame, and reſerved " to the ſaid Lord *Charles* the Infant, otherwiſe than by their Father's " or Grandfather's Diſpoſition ſhall be given or left unto them.

" Moreover, if it fortune no Male Child to be born of this Matri- " mony, but only Females,

" In that Caſe the eldeſt Female ſhall with full Right ſuceeed in the " ſaid Lands and Dominions of the *Lower Germany*; ſo as neverthe- " leſs ſhe being minded to chuſe to Huſband any Man not born in " *England*, or the *Lower Germany*, ſhe do contract the ſame Matri- " mony by the Counſel and Conſent of the ſaid Lord *Charles* the In- " fant, her Brother;

" Or elſe if ſhe take any Man to Huſband that is not born in *Eng-* " *land*, or in the *Lower Germany*, neglecting the Counſel and Con- " ſent of the ſaid Lord *Charles*,

" In that Caſe the Right of Succeſſion ſhall be and remain to the " ſaid Lord *Charles*, the Infant, in the ſaid Dominions of *Lower* " *Germany*, *Burgundy*, and their Apurtenances, which in the Caſe " aforeſaid ſhall revert to him or his Iſſue, as well Males as Females.

" And

" And yet nevertheleſs in that Caſe both ſhe and the other Daugh-
" ters alſo deſcending of this Matrimony (no Male Children remaining)
" ſhall be endowed of her Father's Lands and Poſſeſſions, as well of
" *Spain* as of *Lower Germany*, competently and according to the Cu-
" ſtoms of the ſaid Realms and Dominions.

" And for want alſo of the ſaid Lord *Charles*, and the Iſſue of him,
" and none other Children remaining of this Matrimony, but Women;
" in that Caſe the eldeſt Daughter to be born of this Matrimony ſhall
" ſucceed, not only in the ſaid Dominions of *Lower Germany* and
" *Burgundy*, but alſo in the other Realms of *Spain*, *England*, and the
" reſt, after the Nature, Laws and Cuſtoms of the ſame.

" Provided nevertheleſs and expreſsly reſerved in all and ſingular the
" above declared Caſes of Succeſſion, That whatſoever he or ſhe be
" that ſhall ſucceed in them, they ſhall leave to every of the ſaid
" Realms, Lands and Dominions, whole and entire their Privileges,
" Rights, and Cuſtoms: And the ſame Realms and Dominions ſhall
" adminiſter and cauſe to be adminiſtered by the natural born of the
" ſame Realms, Dominions and Lands; and in all Things faithfully
" procure their Utility and Quiet; and ſhall rule and nouriſh them
" in good Juſtice and Peace, according to their Statutes and Cu-
" ſtoms.

" Finally, That between the ſaid Emperor, the Prince, and his Suc-
" ceſſors, their Realms and Dominions whatſoever, and the ſaid moſt
" gracious Queen, her Realms and Dominions, there ſhall be from
" henceforth an entire and ſincere Fraternity, Unity, and moſt ſtrait
" Confederacy for ever (God willing) happily to endure,

" So as they ſhall mutually one of them aid another in all Things
" which to themſelves and their Honour, and to the Conſervation of
" their Heirs and Succeſſors, ſhall be moſt agreeable, according to the
" Strength, Form and Effect of the latter Treaty of a ſtrait Amity,
" bearing Date at *Weſtminſter*, the Year of our Lord God 1542,

" The Declaration of which Treaty bears Date at *Utrecht* the ſix-
" teenth Day of *February*, in the Year of our Lord God 1540.

" And in another Treatiſe, theſe Articles following:

" *Firſt*, That the ſaid moſt noble Prince ſhall not promote, admit
" or receive to any Office, Adminiſtration or Benefit in the ſaid
" Realm of *England*, and Dominions thereunto belonging, any Stran-
" ger or Perſons not born under the Dominion and Subjection of the
" ſaid moſt noble Queen of *England*.

" That the ſaid moſt noble Prince ſhall receive and admit into the
" Service of his Houſhold and Court, Gentlemen and Yeomen of the
" ſaid Realm of *England*, in a convenient Number, and ſhall eſteem,
" entertain and nouriſh them as his proper Subjects,

" And

" And ſhall bring none in his Retinue, nor have none with him " that will do any Diſpleaſure or Wrong to the Subjects of the ſaid " Realm.

" And if they do, he ſhall take order to correct them with condign " Puniſhment, and ſee them expelled his Court.

" That the ſaid moſt noble Prince ſhall do nothing whereby any " thing be innovated in the State and Right either publick or private, " or in the Laws and Cuſtoms of the ſaid Realm of *England*, or the " Dominions thereunto belonging: But ſhall contrarywiſe confirm and " keep to all Eſtates and Orders, their Rights and Privileges.

" That the ſaid Lord Prince ſhall not lead away the foreſaid moſt " noble Lady the Queen out of the Borders of her Highneſs's Realm, " unleſs ſhe herſelf deſire it, nor carry the Children that ſhall be born of " his Matrimony out of the ſame Realm of *England*; but to the Hope " of Succeſſion to come, ſhall there ſuffer them to be nouriſhed and " brought up; unleſs it ſhall be otherwiſe thought good by the Conſent " and Agreement of the Nobility of *England*.

" And in caſe that no Children being left, the ſaid moſt noble Queen " do die before him, the ſaid Lord Prince ſhall not challenge any Right " at all in the ſaid Kingdom, but without any Impediment ſhall per- " mit the Succeſſion thereof to come unto them to whom it ſhall be- " long and appertain by the Right and Laws of the ſaid Realm.

" *Item*, That the ſaid moſt noble Prince ſhall not bear or carry " over out of the foreſaid Realm, the Jewels and precious Things of " Eſtimation, neither ſhall he alienate or do away any whit of the " Appurtenances of the ſaid Realm of *England*, or ſuffer any part of " them to be uſurped by his Subjects or any other,

" But ſhall ſee that all and ſingular the Places of the Realm, and " eſpecially the Forts and Frontiers of the ſame, be faithfully kept " and preſerved, to the Uſe and Profit of the ſaid Realm, and by the " natural born of the ſame.

" He ſhall not ſuffer any Ship, Guns, or Ordnances whatſoever of " War, of Defence, to be removed or conveyed out of the ſaid Realm; " but ſhall contrarywiſe cauſe them diligently to be kept and renewed " when Need requireth: And ſhall ſo provide, that the ſame may " be always ready in their Strength and Force, for the Defence of the " Realm.

" *Item*, That the Realm of *England*, by occaſion of this Matrimo- " ny, ſhall not directly nor indirectly be entangled with the War that " is between the moſt victorious Lord the Emperor, Father unto the " ſaid Lord Prince, and *Henry* the *French* King,

" But He the ſaid Lord *Philip*, as much as ſhall lye in him, on the " behalf of the ſaid Realm of *England*, ſhall ſee the Peace between the " ſaid Realms of *France* and *England* obſerved: And ſhall give no " Cauſe of any Breach.

" By which Covenant the latter Treatiſe of a ſtraighter Amity ſhall " not be in any Point derogated,

" But the ſame ſhall ſtill remain in his Vigour and Force;

" Saving alſo, that in the behalf of his Father's other Realms and " Dominions, the ſaid Prince ſhall have free Power to aid and aſſiſt " his moſt noble Father, as he ſhall think beſt, in the Defence of his " Lands, and the Revenge of the Injuries he hath received.

" Foraſmuch as we your moſt humble and obedient Subjects the " Lords Spiritual and Temporal, and the Commons in this preſent " Parliament aſſembled, have naturally, ſincerely and deliberately con- " ſidered and weighed all and ſingular the ſaid Covenants, Grants, " Pacts, Treatiſes and Agreements, concerning the ſaid moſt honoura- " ble and fortunate Marriage between your Highneſs and the ſaid moſt " noble Prince of *Spain*, and the Dependance thereof,

" And do thereupon think, deem and judge the ſame to be both ho- " nourable unto your Highneſs, and commodious unto the Common- " wealth of this your Realm:

" Therefore we your ſaid humble and obedient Subjects, moſt hum- " bly pray and beſeech your Majeſty, That like as it hath pleaſed " your Highneſs, upon your free and natural Zeal and Good-will that " you have and bear unto this your Realm, and to your loving Sub- " jects of the ſame, to condeſcend and agree that all and ſingular the " ſaid Grants, Articles, Pacts and Agreements, concerning the ſaid Mar- " riage, ſhall be revealed, opened and declared unto us your ſaid lo- " ving Subjects, in this your High Court of Parliament:

" So it may pleaſe your Majeſty, for the more perfect Corroboration " and Strength of the ſaid Articles, Grants, Pacts and Agreements; " and to the Intent that the ſame may be the more inviolably obſerved " and kept;

" That it may be enacted,

" By the Authority of this preſent Parliament,

" That all and ſingular the ſaid Articles, Covenants, Grants, Treatiſes, " Pacts and Agreements, had, made and concluded for and concerning the " ſaid Marriage between your Highneſs and the ſaid Prince of *Spain*, " and all and ſingular the Dependencies thereof before rehearſed; ſhall " immediately after the ſaid Marriage had and ſolemnized, ſtand, re- " main, and abide in perfect Force and Efficacy, according to the Effect, " Senſe and true Meaning of the ſaid Treatiſes.

" And where amongſt other the Articles above remember'd, it is agreed, " That the ſaid moſt noble Prince ſhall during the ſaid Marriage have " and enjoy, jointly together with your Majeſty, the Stile, Honour, " and Kingly Name of the ſaid Realms and Dominions to your High- " neſs appertaining; and ſhall alſo aid your Highneſs being his Wife " in the happy Adminiſtration of your Realms and Dominions,

" The right Laws, Privileges and Cuſtoms of the ſaid Realms and " Dominions being nevertheleſs reſerved and maintained.

" And where alſo it is provided, covenanted, and agreed, amongſt " other the ſaid Articles in the ſaid Treatiſes, by and on the behalf of " the ſaid moſt noble Prince, That the ſaid moſt noble Prince ſhall per- " mit and ſuffer your moſt excellent Majeſty to have the whole Diſpoſi- " tion of all the Benefices and Offices, Lands, Revenues, and Fruits of " the ſaid Realms and Dominions: And that the ſaid moſt noble Prince " ſhall not do any thing whereby the State and Right either publick or " private, or the Laws and Cuſtoms of the ſaid Realm of *England*, or " the Dominions thereunto belonging, be innovated.

" For the more expreſs Explanation and Declaration of the Premiſſes, " We your faithful, loving and obedient Subjects, do moſt humbly be- " ſeech your Highneſs,

" That it may be provided, enacted and eſtabliſhed,

" By the Authority of this preſent Parliament,

" That your Majeſty, as our only Queen, ſhall and may ſolely and as " a ſole Queen, uſe, have, and enjoy the Crown and Sovereignty of, and " over your Realms, Dominions and Subjects, with all the Pre- " eminences, Prerogatives, Dignities, Authorities, Juriſdictions, Ho- " nours, Caſtles, Manors, Lands, Tenements, and Hereditaments, be- " longing to the ſame, in ſuch ſole and only State, and in as large and " ample Manner and Form, in all Degrees, Acts, Exerciſes, and Con- " ditions, from and after the Solemnization of the ſaid Marriage, and " at all Times during the ſame (which God grant long to continue and " endure) as your Highneſs now hath, uſeth, exerciſeth, and enjoyeth " the ſame; and as your Grace hath had, uſed, exerciſed, and enjoyed, " or might have had, uſed or enjoyed the ſame, before the Solemni- " zation of the ſaid Marriage; without any Right, Title, Eſtate, " Claim, or Demand to be given, come or grown unto the ſaid moſt no- " ble Prince, as Tenant by the Courteſy of this Realm; or in or by any " other Mean, by Force of the ſaid Marriage, of, in, and to your ſaid " Imperial Crown, Sovereignty, Realms, Dominions, Subjects, Pre- " eminencies, Prerogatives, Dignities, Authorities, Juriſdictions, Ho- " nours, Caſtles, Manors, Lands, Tenements and Hereditaments, be- " longing to the ſame, by any Laws, Uſage or Cuſtom whatſo- " ever:

" The ſaid Marriage, or any Statute, Cuſtom, Preſcription or other " thing to the contrary in any wiſe notwithſtanding.

" And yet nevertheleſs, That it may be enacted, ordained, and eſta- " bliſhed,

" By the Authority of this preſent Parliament,

" That all and ſingular Gifts, Grants, Letters Patents, Exchanges, " Confirmations, Leaſes, and other Writings, which after the ſaid Mar-

" riage

" riage and during the ſame ſhall paſs and be made of the ſaid Bene-
" fices, Offices, Lands, Revenues, and Fruits, or of any of them, ſhall
" be intituled, ſet forth and made in the Names of the ſaid moſt noble
" Prince, and of your moſt excellent Majeſty; whether the ſaid moſt
" noble Prince ſhall be preſent within the ſaid Realms and Dominions,
" or within any of them, or abſent: And the ſame Gifts, Grants, Let-
" ters Patents, Exchanges, Confirmations, Leaſes and other Writings,
" ſo ſet forth and made, ſhall be ſigned and confirmed with the Sign
" Manual of your Highneſs; and the ſame ſo ſigned and ſealed with
" the Great Seal of this Realm, or with ſuch Seal as hath been ac-
" cuſtomed, ſhall be

" By Authority of this preſent Parliament,

" deemed, adjudged, declared, and pronounced to be as good, perfect, and
" of like Force, Strength, and Effect in the Law, to all Intents, Conſtructi-
" ons, and Purpoſes, againſt the ſaid moſt noble Prince, and againſt your
" Highneſs, your Heirs and Succeſſors, as if your excellent Majeſty
" had been at the Time of the making thereof ſole and unmarried.

" And that all Gifts, Grants, Letters Patents, Exchanges, Confir-
" mations, Leaſes and other Writings, which after the ſaid Marriage
" and during the Time of the ſame, ſhall paſs and be made of the
" ſaid Benefices, Offices, Lands, Revenues and Fruits, or of any of
" them, whereunto the Sign Manual of your Highneſs ſhall not be
" ſet, made or put, ſhall be

" By the Authority of this preſent Parliament,

" from Time to Time, deemed, adjudged, accepted, taken and decreed,
" to be of no Force nor Effect, but utterly fruſtrate and void in the
" Law to all Intents, Conſtructions and Purpoſes:

" The ſaid Marriage, or any Law, Uſage or Cuſtom to the contrary
" in anywiſe notwithſtanding.

" And that it may be alſo farther enacted, ordained, and eſta-
" bliſhed,

" By the Authority aforeſaid,

" That all Commiſſions, Inſtructions, Pardons, Writs of Summons,
" Prorogations or Diſſolutions of Parliaments, Royal Aſſents, Adjourn-
" ments of Terms, Original Writs, and other Proceſſes, Inſtruments,
" Licences, Judicial Acts, and all manner of Writings other than the
" ſaid Gifts, Grants, Letters Patents, Exchanges, Confirmations, Leaſes,
" and other Writings concerning or in any wiſe touching the ſaid Bene-
" fices, Offices, Lands, Revenues, and Fruits, or any of them, after
" the ſaid Marriage, and during the Time of the ſame, whether the
" ſaid noble Prince ſhall be preſent within the ſaid Realms and Domi-
" nions, or within any of them, or abſent, after the Signing by your
" Majeſty of the Warrants or Writings of them heretofore uſed to
" be ſigned, ſhall paſs, be ſet forth, and made from Time to Time,
" in the Names of the ſaid moſt noble Prince and your moſt excellent

" High-

" Highneſs, by ſuch Officers and Miniſters, and in ſuch Manner,
" Form and Order, as hath been uſed and accuſtomed to paſs, be
" ſet forth and made in the Time or Times of your Grace's moſt no-
" ble Progenitors, or any of them; and ſhall be,

" By the Authority of this preſent Parliament,

" of the ſame and like Force, Strength and Effect, in the Law, to all
" Intents, Conſtructions and Purpoſes, as if your moſt excellent Ma-
" jeſty were then ſole and not married:

" The ſaid Marriage, or any Law, Uſage, or Cuſtom to the contrary
" in any wiſe notwithſtanding.

" Provided always, and that it may be enacted,

" By the Authority aforeſaid,

" That notwithſtanding this Act, or any thing therein contained, it ſhall
" be lawful to the Lord Chancellor, Lord Treaſurer, Lord Privy Seal,
" Lord Steward of the Houſhold, Lord Admiral, Juſtices of either
" Bench, and all other Judges, Officers and Miniſters of the Court of
" *Chancery*, the *Exchequer*, the *Marſhalſea*, Wards and Liveries; the
" Dutchy of *Lancaſter*, the *Admiralty*, the Preſidents of the Council,
" the Juſtices of Foreſts, and all other Judges, Officers and Miniſters
" of this your ſaid Realm and Dominions of the ſame for the Time be-
" ing; as well to make Leaſes and Grants in the Names of the ſaid noble
" Prince and of your Highneſs, of all ſuch your Majeſty's Lands, Te-
" nements and Hereditaments, not being entire Lordſhips or Manors,
" and all other Things within their Order, Rule and Survey, in ſuch
" like Manner and Form as they or any of them have uſed, or might
" do before the making of this Act, by Virtue of their ſaid ſeveral
" Offices and Rooms. So that upon all and every ſuch Leaſes the old
" accuſtomed Rents, Farms or yearly Profits thereof be reſerved and
" payable yearly during ſuch Leaſes; and ſo that the ſame Leaſes ex-
" ceed not the Number and Term of One and twenty Years: And alſo
" to do, uſe and exerciſe by themſelves or their Deputies in the ſaid
" Offices and Rooms, all and every other Act and Things which they
" or any of them, did or might lawfully have done, uſed or exerciſed
" by Force or Virtue of the ſaid Offices or Rooms, before the making
" of this Act, as though this Act had never been had or made."

To which I will ſubjoin another Act in the 1ſt and 2d Years of King *Philip* and Queen *Mary*, late Queen of *England*; and whereby certain Offences were made Treaſon, and alſo for the Government of the King and Queen's Iſſue.

" It was ordained and enacted,

" 1. By the King and Queen's Majeſties,

" 2. With the Aſſent of the Lords Spiritual and Temporal,

" 3. And of the Commons,

" in that Parliament aſſembled; and by Authority of the ſame;

" 1. That

" 1. That if any Perſon or Perſons, after the firſt Day of *February* " then next to come, during the Marriage between the King and " Queen's Majeſties, do compaſs or imagine to deprive the King's Ma- " jeſty that now is, from the having and enjoying jointly together " with the Queen's Highneſs, the Stile, Honour, and Kingly Name of " the Realms and Dominions, unto the Queen's Highneſs appertaining, " or to deſtroy the King during the ſaid Matrimony, or to deſtroy the " Queen or the Heirs of her Body begotten, being Kings or Queens of " this Realm; or to levy War within this Realm of *England*, or with- " in any of the Marches of the ſame, againſt King *Philip*, during the " ſaid Marriage, or againſt Queen *Mary* or any of her ſaid Heirs, being " Kings or Queens of the ſaid Realm; or to depoſe the Queen or " the Heirs of her Body begotten, being Kings or Queens of this " Realm, from the Imperial Crown of the Realm and Dominions a- " boveſaid: And the ſame Compaſſes or Imaginations, or any of them, " maliciouſly, adviſedly and directly ſhould or did utter by open Preach- " ing, expreſs Words or Sayings: Or if any Perſon or Perſons, after " the ſaid firſt Day of *February*, by Preaching, expreſs Words, or " Sayings, ſhould maliciouſly, adviſedly and directly ſay, publiſh, de- " clare, maintain or hold Opinion, that King *Philip*, during the ſaid " Matrimony, ought not to have or enjoy jointly together with the " Queen,

" The Stile, Honour, and Kingly Name of this Realm:

" Or that any Perſon or Perſons, being neither the King or the " Queen's Majeſty that then were, during the ſaid Matrimony be- " tween them, ought to have had or enjoyed the Stile, Honour and " Kingly Name of this Realm; or that the ſaid Queen *Mary*, during " her Life, was not or of Right ought not to be Queen of this Realm; " or after her Death, that the Heirs of her Highneſs's Body, being " Kings or Queens of this Realm, of Right ought not to be Kings " or Queens of this Realm, or to have had or enjoyed the ſame; " or that any Perſon or Perſons other than Queen *Mary*, during her " Life, ought to be Queen of this Realm, or after her Death, other " than the Heirs of her Body, being Kings or Queens of this Realm, " as long as one of her ſaid Heirs of her Body begotten, ſhould be in " Life, of Right ought to have, or to have had the Imperial Crown of " this Realm:

" 1. That then every ſuch Offender being thereof duly convicted " or attainted by the Laws of this Realm, their Abettors, Procurors, " and Counſellors, and all and every their Comforters, knowing the " ſaid Offences or any of them to be done: And being thereof con- " victed or attainted, as is aboveſaid, for his or their ſuch Offence, " ſhould forfeit and loſe to the Queen's Highneſs, her Heirs and Suc- " ceſſors, all his and their Goods and Chattels, and the whole Iſſues " and Profits of his and their Lands, Tenements, and other Heredita-

" ments, for term of the Life of every ſuch Offender or Offenders:
" And alſo ſhould have and ſuffer during his or their Lives perpetual
" Impriſonment.

" 2. Provided always, and it was enacted,

" By the Authority aforeſaid,

" That all and every Eccleſiaſtical Perſon, being convicted or attainted
" in Form aforeſaid for every ſuch Offence, ſhould be deprived by
" the Ordinary from his Promotion Spiritual or Eccleſiaſtical, in ſuch
" like Manner and Form, that it ſhould be lawful for every Patron,
" Founder, or Giver thereof, to preſent after ſuch Deprivation then
" had, ſome one or other to the ſame, as though the ſaid Offender or
" Offenders were deceaſed.

" And if any Perſon or Perſons thereafter convicted or attainted of
" any the ſaid Offences in Form aforeſaid committed, ſhould after his
" or their Conviction or Attainder, eftſoons commit or perpetrate any
" of the ſaid Offences in Form aforeſaid, That then every ſuch ſe-
" cond Offence or Offences ſhould be deemed and adjudged High
" Treaſon: And the Offender or Offenders therein, their Abettors,
" Procurers and Counſellors, and all and every their Aiders and Com-
" forters, knowing the ſaid Offences or any of them to have been
" done; being thereof convicted or attainted according to the Laws
" and Statutes of this Realm, ſhould be judged and deemed high Trai-
" tors, and ſhould ſuffer Pains of Death, and loſe and forfeit all their
" Goods and Chattels, Lands and Tenements, to the Queen's Ma-
" jeſty, her Heirs and Succeſſors, as in Caſes of High Treaſon, by
" the Laws of this Realm at that Day ought to be loſt and forfeited.

" 3. And it was farther enacted,

" By the ſaid Authority,

" That if any Perſon or Perſons, at any Time after the ſaid firſt Day
" of *February* then next to come, during the ſaid Marriage ſhould
" compaſs or imagine the Death of King *Philip*; and the ſame mali-
" ciouſly, adviſedly and directly, ſhould utter and attempt by any Wri-
" ting, Printing, Overt Deed or Act: Or if any Perſon or Perſons, at any
" Time after the ſaid firſt Day of *February* then next coming, ſhould ma-
" liciouſly, adviſedly, and directly by Writing, Printing, Overt Deed or
" Act, affirm, That King *Philip*, during the ſaid Matrimony, ought
" not to have had, or enjoyed jointly together with Queen *Mary*,

" The Stile, Honour and Kingly Name of this Realm;

" Or that any Perſon or Perſons, being neither the King nor Queen's
" Majeſty, during the ſaid Matrimony between them, ought to have
" had, and enjoyed the Stile, Honour and Kingly Name of this Realm:
" Or if any Perſon or Perſons, after the ſaid Day, by any Writing,
" Printing, Overt Deed or Act, maliciouſly, adviſedly and directly af-
" firm, That Queen *Mary*, during her Life, then was not or ought
" not to have been Queen of this Realm; or after her Death, that the

" Heirs

" Heirs of her Highneſs's Body, being Kings or Queens of this Realm,
" of Right ought not to have and enjoy the Imperial Crown of this
" Realm.

" Or that any Perſon or Perſons, other than Queen *Mary*, during
" her Life, or after her Death, other than the Heirs of her Body be-
" gotten being Kings or Queens of this Realm, as long as any of her
" ſaid Heirs of her Body ſhould be in Life, of Right ought to have
" had, and enjoyed the Imperial Crown of this Realm:

" That then every ſuch Offence and Offences ſhall be adjudged High
" Treaſon; and the Offender and Offenders therein, their Abettors,
" Procurers, and Counſellors, and all and every their Aiders and Com-
" forters, knowing the ſaid Offences, or any of them, to have been
" done, being thereof convicted or attainted by the Laws and Statutes
" of this Realm, ſhould be deemed and adjudged High Traitors, and
" ſhould ſuffer Pains of Death, and loſe and forfeit all their Goods
" and Chattels, Lands, and Tenements, to the Queen's Majeſty, her
" Heirs and Succeſſors, as in Caſes of High Treaſon as is aforeſaid.

" 4. And albeit the Lords Spiritual and Temporal, and the Com-
" mons in that Parliament aſſembled, had firm Hope and Confidence
" in the Goodneſs of Almighty God, that like as hitherto he had mi-
" raculouſly preſerved the Queen's Majeſty from many great and im-
" minent Perils and Dangers, even ſo he would of his infinite Good-
" neſs give her Highneſs Strength, the rather by their continual Prayers
" to paſs well the Danger of Deliverance of Child, wherewith it was
" pleaſed him (to all our great Comforts) to bleſs her.

" Yet foraſmuch as all Things in this World were uncertain, and
" having before their Eyes the dolorous Experience of the unconſtant
" Government during the Time of the Reign of the late King *Ed-*
" *ward* VI.

" They plainly ſaw the many Inconveniencies, great Dangers and
" Perils that might enſue to this whole Realm, if Foreſight was not
" uſed to prevent evil Chances if they ſhould happen.

" For the eſchewing whereof

" 1. The Lords Spiritual and Temporal,

" 2. And the Commons,

" in that Parliament aſſembled, for, and in Conſideration of, a moſt
" ſpecial Truſt and Confidence that they had and repoſed in King
" *Philip*, for and concerning the good and politick Government, Or-
" der, and Adminiſtration of this Realm, in the Time of the young
" Years of the Iſſue or Iſſues of her Majeſty's Body to be born, if it
" ſhould pleaſe God to call the Queen's Highneſs out of this Life,
" during the tender Years of ſuch Iſſue or Iſſues (which God forbid)
" according to ſuch Order and Manner as thereafter, in that Act, his
" Highneſs's moſt gracious Pleaſure was, ſhould have been declared
" and ſet forth, had made their moſt humble Suit,

" By

" By the Aſſent of the Queen's Highneſs, that his Majeſty would " vouchſafe to accept and take upon him the Rule, Order, Education, " and Government of the ſaid Iſſue or Iſſues to be born, as is aforeſaid, " upon which their Suit being of his Majeſty moſt graciouſly accepted,

" It pleaſed his Highneſs not only to declare, That like as for " the firſt Part his Majeſty verily truſted that almighty God, who had " hitherto preſerved the Queen's Majeſty, to give this Realm ſo good an " Hope of certain Succeſſion in the Blood Royal of the ſame Realm, " would aſſiſt her Highneſs with his Graces and Benedictions, to ſee " the fruit of her Body well brought forth, live, and able to govern; " whereof neither all this Realm, ne all the World beſides, ſhould or " could receive more Comfort than his Majeſty ſhould and would.

" Yet if ſuch Chance ſhould happen, his Majeſty, at their humble " Deſire, was pleaſed and contented not only to accept and take upon " him the Care and Charge of the Education, Rule, Order, and " Government of ſuch Iſſues, as of that moſt happy Marriage ſhould " be born between the Queen's Highneſs and him,

" But alſo, during the Time of ſuch Government, would by all " Ways and Means, ſtudy, travel, and employ himſelf to advance the " Weale both Publick and Private of this Realm, and Dominion " thereunto belonging, according to the ſaid Truſt in his Majeſty re- " poſed, with no leſs Good-will and Affection, than if his Highneſs " had been naturally born among them.

" 5. In Conſideration whereof

" It was enacted,

" By the King and Queen's moſt excellent Majeſties,

" By the Aſſent of the Lords Spiritual and Temporal,

" And of the Commons,

" of that Parliament aſſembled, and by the Authority of the ſame, " that if it ſhould ſo pleaſe God to call the Queen's Majeſty out of " this preſent Life (which God forbid) before the Iſſue of her Body " inheritable to the Crown of this Realm; if it be Male, ſhould ac- " compliſh the Age of Eighteen Years,

" Or if it be Female, before it ſhould be of the Age of Fifteen " Years, and not married after the Age of Conſent, and before the ſaid " Age of Fifteen Years; that then, and immediately after, and from the " deceaſe of the Queen, King *Philip* ſhould have the Rule, Order, Edu- " cation, and Government of the Perſon of ſuch Iſſue or Iſſues, and the " Rule, Order, and Government (under ſuch Iſſue or Iſſues) of this " Realm, and the Dominions to the ſame belonging, until the ſaid " Iſſue or Iſſues, inheritable to the Imperial Crown of this Realm, " if it ſhould be Male, ſhould accompliſh the full Age of Eighteen " Years.

" And if it ſhould be Female, until ſuch Iſſue Female ſhould ac- " compliſh the Age of Fifteen Years, and be married after the Age

" of

" of Conſent, and before the ſaid Age of Fifteen Years, if the ſaid " Iſſue or Iſſues, and King *Philip*, ſhould ſo long live together.

" And that during, and by all the Time of ſuch Government, all " and every the Pacts, Covenants, Articles and Agreements, men- " tioned and compriſed in the Treatiſes and Act of Parliament, and " every of them made and concluded, for and concerning the honour- " able Marriage had and conſummate between the King and Queen's " Majeſty, which on the Behalf of his Majeſty being to be obſerved, " performed, and kept, ſhall, after the Deceaſe of the Queen's Ma- " jeſty, during the Time of the ſaid Government, remain, con- " tinue, and be in as good and full Force, Strength, and Effect, to " all Intents and Purpoſes, as they were at any Time during the ſaid " Marriage, or then had been, as if they had then been by apt Words, " Terms, and Sentences, inſerted and rehearſed in that preſent Act, " and made and enacted to ſtand, remain, continue, and to be " obſerved and kept during the Time of the ſaid Government, and " ſhould be by his Majeſty, during the ſaid Time, inviolably obſerved, " performed, maintained, and upholden, in ſuch Sort, and in as full, " large, and ample Manner to all Reſpects, as they ſhould and ought " to have been during the Time of the ſaid Marriage, or after.

" And his Highneſs, and the Queen's moſt excellent Majeſty, were " pleaſed and contented that it ſhould be enacted,

" By that Parliament,

" That nothing ſhould be done, permitted, or aſſented unto by his " Majeſty to the contrary.

" 6. And it was further enacted,

" By the Authority aforeſaid,

" That if any Perſon or Perſons, during the Time that King *Phi-* " *lip* ſhould and ought to have the Order, Rule, Education, and Go- " vernment of ſuch Iſſue or Iſſues, being King or Queen of this Realm, " according to the Order and Proviſion aforeſaid, maliciouſly, adviſed- " ly, and directly, by Writing, Printing, Overt Deed, or Act, ſhould " compaſs, attempt, and go about to deſtroy his Perſon, or ſhould " deprive or remove his ſaid Highneſs from the Order, Rule, Edu- " cation, and Government of the ſame Iſſue or Iſſues, being King or " Queen of this Realm, contrary to the Tenor, Intent, and true " Meaning of that Act,

" That then every ſuch Perſon or Perſons ſo offending, their Pro- " curers and Abettors being thereof lawfully convicted or attainted by " the Laws of this Realm, ſhould be deemed and adjudged High Trai- " tors; and that all and every ſuch Offence and Offences, ſhould be " deemed and adjudged High Treaſon. And the Offender and Offen- " ders therein, their Procurers, Counſellors, and Abettors, ſhould incur " the Dangers, Forfeitures, and Penalties of High Treaſon.

" 7. And it was further enacted,

" By the Authority aforeſaid,

" That all Tryals thereafter to be had, awarded, or made for any " Treaſon, ſhould be had and uſed according to the due Order and " Courſe of the Common Laws of this Realm, and not otherwiſe;

" Saving to every Perſon and Perſons, Bodies Politick and Corporate, " their Heirs and Succeſſors (other than the Offenders and their Heirs, " and ſuch Perſon or Perſons as ſhould claim to any of their Uſes) all " ſuch Rights, Titles, Intereſts, Poſſeſſions, Leaſes, Rents, Reverſions, " Offices, and other Profits, which they or any of them ſhould have at " the Day of committing ſuch Treaſons, or at any Time afore, in as " large and ample Manner as if that Act had never been had or made.

" Provided always, and it was declared and enacted,

" By the Authority aforeſaid,

" That Concealment or keeping Secret of any High Treaſon, ſhould " be deemed and taken only Miſpriſion of Treaſon: And the Of- " fender therein to forfeit and ſuffer, as in Caſe of Miſpriſion of Trea- " ſon heretofore had been uſed, any thing above-mentioned to the " contrary notwithſtanding."

I am very ſenſible of the Tedioufneſs of theſe long Recitals; but if the Reader deſires to know the whole Matter of Fact, and ſo to make a true Judgment touching thoſe memorable Tranſactions, he will pardon me, and obſerve,

Firſt, That the Articles of Marriage between Queen *Mary* and *Philip*, Prince of *Spain*, wherein it was particularly agreed that *Philip* ſhould be aiding to her in the happy Adminiſtration of her Realms and Dominions, were confirmed in Parliament.

Secondly, *Philip* was created King, by giving him the Style, Honour, and kingly Name of thoſe Realms and Dominions thereunto appertaining, by Authority of Parliament.

Thirdly, The Succeſſion of the Crown was ſettled by the ſame Authority.

Fourthly, It was made High Treaſon for any to compaſs, or imagine to deprive him from having and enjoying jointly, together with the Queen, the Style, Honour, and kingly Name of the Realms and Dominions thereunto belonging.

Fifthly, Or to deſtroy him during the ſaid Matrimony, or to levy War againſt him, or to declare or maintain, That he ought not to have and enjoy jointly, together with the Queen, the ſaid Style, Honour, and kingly Name of the Realm; and all this done by the High Court of Parliament.

Sixthly, It was farther enacted, That if the Queen ſhould die before King *Philip*, leaving Iſſue under a certain Age, he was to have the Rule, Order, Education, and Government of ſuch Iſſue or Iſſues.

If

If a Male, till Eighteen Years: If a Female, till Fifteen Years, and be married after the Age of Conſent.

Seventhly, It was enacted by Authority aforeſaid, That if any ſhould compaſs, attempt, or go about to deſtroy the Perſon of King *Philip*, or to deprive or remove him from the Order, Rule, Education, or Government of the ſame Iſſue or Iſſues, being King or Queen of this Realm,

Every ſuch Perſon or Perſons ſhould, being lawfully convicted of ſuch Offences, be deemed and adjudged High Traitors, and undergo the Penalties of High Treaſon.

Eighthly and *Laſtly*, King *Philip* was to have the Co-legiſlative Power with the Queen in giving Royal Aſſents to Bills in Parliament, and that too by Authority aboveſaid.

Several of which Bills have been ſigned with *le Roy & la Royne lez veulent*, and were then remaining in the Cuſtody of the Clerk of the Houſe of Lords.

1. *An Act repealing the Attainder of the Lord Cardinal* Poole, Ann. 1 & 2 Phil. & Mar. N°. 18.

2. *An Act for the Foundation of the Hoſpital of* Stokerpudges, *in the County of* Bucks, *by the Lord* Haſtings *of* Loughburrough, Ann. 4 & 5 Phil. & Mar. N°. 14.

Now whoever conſiders all this, and compares it with the modern Principles of incommunicable Prerogatives, muſt grant that moſt of theſe Particulars were peculiar Rights to the Queen herſelf, called by ſome *Sanctimonia Summæ Poteſtatis*, and which were ſacred and individual.

Give me leave then to aſk theſe two General Queſtions.

I. What, if either for Reaſons known only to her Royal Breaſt, or upon Pretence of the Publick Good, and the Welfare and Safety of the People, with which God had intruſted her Highneſs alone, and of all which ſhe was the ſole Judge upon Earth: I ſay, what if her Highneſs had by her *Non Obſtante* controlled and diſpenſed with thoſe two Acts of Parliament? Or,

II. What if ſhe had directed the Judges of *Weſtminſter Hall* to have repealed them totally, by adjudging them void, as being plainly contrary to the Queen's Sovereign Authority, abſolute Power, and Prerogative Royal, and which reſtrained her in the Exerciſe of the Fullneſs and Plenitude of her Imperial Dignity?

I ſay what would theſe Queſtions reſolve themſelves into?

Why, Truly theſe would be the melancholy Reflections upon them:

Firſt,

Firſt, The Style, Honour, and kingly Name of *Philip*, were gone with a Blaſt.

Secondly, His Parliamentary Right of Guardianſhip was abſolutely loſt.

And I pray then let me aſk,

Thirdly, What would have become of King *Philip* himſelf?

But that yet we may ſee through theſe Pretences more clearly,

Let us obſerve,

That the Queen did not know that ſhe had ſuch Fullneſs and Plenitude of Prerogative inſeparably annexed to her Perſon.

Yet, as our Lawyers ſay,

Præſumitur Rex habere omnia Jura in Scrinio pectoris ſui.

Nor did the Lords Spiritual nor Temporal, nor Commons, nor King *Philip*'s learned Counſel, who we may believe, were ſuch as whoſe Judgments might have been relied upon in Caſes of the greateſt Conſequence,

Nay, to come ſtill cloſer to the Point, I muſt add,

That the Judges and others of Queen *Mary*'s learned Counſel knew nothing of theſe Prerogatives.

And the Reaſon of my Belief of this laſt Particular is,

Becauſe all, or moſt of them, conſulted and adviſed upon the penning and drawing up of theſe two Acts of Parliament; which I thus make out, even beyond an Anſwer to the contrary.

1. It is plain that thoſe Acts were Court Acts; and the Judges, being of the Queen's learned Counſel, were obliged, *ratione Officii*, to give their mature Deliberation in forming of ſuch Bills.

2. The ſecond Parliament, in which the Act (touching the Articles of the Queen's Marriage) paſs'd into a Law, was diſſolved the 4th of *May*.

An Order was made at *St. James's*,

By the Privy Council,

Out of a Tranſcript of the Acts of the Privy Council in the Reign of Queen Mary, *lent me by my dear, honoured and learned Friend, Sir* John Maynard, *the King's Serjeant at Law.*

Wherein Sir *Edward Peckham* was ordered to deliver to the Chancellor, which was by him to be delivered over by way of the Queen's Highneſs's Reward to the Perſons enſuing, for the Travail and Pains, in the two laſt Parliaments, in Manner and Form following, *viz.*

	l.	*s.*	*d.*
1. To the Lord Chief Juſtice (Sir *Tho. Bromley*) —	80	00	00
2. To the Chief Juſtice of the *Common Pleas* (Sir *Richard Morgan*) - - - - - - - - -	60	00	00
3. To the Chief Baron (Sir *David Brooke*) ——	40	00	00
4. To Sir *William Portman* (one of the Judges of the *Queen's Bench*) - - - - - - - - -	36	06	08

5. To

	l.	s.	d.
5. To Sir *Humphrey Browne* (one of the Judges of the *Common Pleas*) - - - - - - - - -	36	06	08
6. To Juſtice *Saunders* (a Judge of the ſame Court) -	36	06	08
7. To Serjeant *Dyer* (the Queen's Serjeant at Law) -	26	13	04
8. To Serjeant *Stamford* (the Queen's Serjeant alſo) -	26	13	04
9. To the Queen's Attorney (*Edward Griffin*, who had been Attorney-General to *Edward* VI.)	40	00	00
10. To the Queen's Sollicitor (Sir *William Cordell*, afterwards Maſter of the *Rolls*) - - -	40	00	00

From hence then there can be little Doubt but all theſe were deeply concerned in Counſel and Advice, in penning and drawing up theſe two Acts.

Now to ſay that the Queen, by her Imperial Sovereignty, could, *Non Obſtante* theſe Acts, *ad libitum*,

Or the Judges, by Virtue of their expounding Power, could, as it were, in a Moment declare them void,

Will be a very heavy Charge upon theſe ten Sages of the Law, and amounts to thus much:

That they all either wilfully depraved, or groſly miſconſtrued the Law of Prerogative in theſe two grand Points.

And if that be admitted, then on the other hand, by the ſame Reaſon, the like Charge may be urged againſt other Judges, and that may be *in infinitum*.

This is the ſtrongeſt Argument to prove that there is an inevitable Neceſſity of one of theſe two Things:

1. That we muſt either ſtop at the *Dernier Reſort*, *viz.* the Parliament. Or,

2. The innumerable Diſputes, which may riſe from the Judges Reſolutions and Opinions in Points of Law, will be endleſs.

Which the Government would by no Means ever yet allow.

For if it ſhould,

That would be to diſarm its own Power, by making it ſo defective, as not to be able to provide either for its own Support, or the Subjects Peace and Happineſs.

But 'tis high Time to ſet Boundaries to this Section. And therefore I ſhall leave it to be conſidered by the judicious and ſober Reader,

Whether the Judges in former Ages took the Law to be, that the King had ſuch an inherent Power veſted in him, as, by a *Non Obſtante* put into his Grants, to ſuſpend general Acts of Parliament.

SECT. IV.

Whether the King, by his Prerogative, could diſpenſe with the Statute of the 23 of Henry VI. *which enacted,* "*That* "*no Man ſhould continue Sheriff, or Under-Sheriff, longer* "*than a Year. And that all Patents, which ſhould after* "*be made of theſe Offices, ſhould be void, any Clauſe or* "*Word of* Non Obſtantes, *in any wiſe put or to be put* "*into ſuch Patents, notwithſtanding.*

Pulton's Stat. Articuli ſup. Cartas, *made* Ann. 28 Ed. I. cap. 8.

AS introductory to the main Point, we are to take notice, *Firſt*, That *Edward* I. in a Parliament held at *Weſtminſter* in the 28th year of his Reign, did grant unto his People,

" That they ſhould have Elections of their Sheriffs in every County " (where the Chivalry was not of Fee) if they liſt."

Coke's 2d Inſt. fol. 558.

Upon which Statute the Lord *Coke* has made this Comment, *viz.*

Vide inter Leges Sancti Edw. Lamb. fol. 136. Hoveden Anal. cap. 35. f. N. B. 163. K.

" Of ancient Time, *ſaith he*, before the making of this Act, ſuch " Officers or Miniſters as were inſtituted either for Preſervation of the " Peace of the County, or for Execution of Juſtice, becauſe it con- " cerned all the Subjects of that County, and they had a great Intereſt " in juſt and due Exerciſes of their ſeveral Places, where by Force of " the King's Writ, in every ſeveral County choſen in full or open " County, by the Freeholders of that County; as before the Inſtitution " of Juſtices of Peace, there were *Conſervatores Pacis* in every County, " whoſe Office, according to their Names, was to conſerve the King's " Peace, and to protect the obedient and innocent Subjects from Force " and Violence."

Rot. Parliam. 5 Edw. I.

Thoſe Conſervators, by the ancient Common Law, were, by Force of the King's Writ, choſen in full open County *de Probioribus & Potentioribus Comitatus*, by the Freeholders of the County.

After which Election ſo made and returned, then, in that Caſe, the King directed a Writ to the Party ſo elected.

Edwardus Dei Gratia, Rex Angliæ, Dominus Hiberniæ & Dux Aquitaniæ, dilecto & fideli Johanni Bretun, ſalutem.

This Bretun was Lord of the Manor of Wickingham in Norf.

Cum Vicecomes noſter Norff. & Comunitas ejuſdem Comitatus elegerunt vos in Cuſtodem Pacis noſtræ ibidem, vobis mandamus quod ad hoc diligenter intendatis, prout idem Vicecomes vobis ſcribi fecerit ex parte noſtra, donec aliud inde præceperimus.

In cujus rei &c. Apud Ceſtr' 2° die Septembris Anno Regni noſtri.

And

And it was then, and yet is, of Coroners to be choſen in full and open County, by the Freeholders of the County, by Force of the King's Writ, *de aſſenſu Comitatus*; and of the other, *per Communitatem ejuſdem Comitatus*.

Regiſt. 177. F. N. B. 163. K. 4 Edw. IV. 44. f. N. B. 164. C. Regiſt.

And by this Act the Election ought to be by the Freeholders of the County; and ſo it was then, and yet is, of the Knights of the Shire for the Parliament, and of the Verderers of a Foreſt.

And likewiſe he ſays it was of ancient Time of the Sheriff of the County, and reſtored by this Act to the Freeholders of the County.

Secondly, But by the Statute of 9 *Edward* II. it was ordained and eſtabliſhed, "That the Sheriff ſhould from thenceforth be aſſigned by "the Chancellor, Treaſurer, Barons of the *Exchequer*, and by the "Juſtices; and in the Abſence of the Chancellor, by the Treaſurer "and Barons, and Juſtices: And that none ſhould be Sheriff, ex-"cept he had ſufficient Land within the ſame Shire, where he ſhould "be Sheriff, to anſwer the King and his People."

Pulton's Stat. *the Statute of Sheriffs made at* Lincoln, Ann. 9 Ed. II.

Thirdly, In the laſt Parliament, 8 *Edward* III. the Commons prayed, "That Sheriffs might continue but one Year, according to the "Statutes of *Lincoln* and *Woodſtock*."

Cotton's Abridgment of the Parliament Records, fol. 15.

To which was anſwered,

"The Statutes thereof made ſhould ſtand; and the Chancellor and "others, who are appointed to make Choice of Sheriffs, ſhall name "able Men, who ſhall continue one Year or longer, according to their "Demeanour."

This was an evaſive Anſwer; and therefore,

Fourthly, By the Statute of 14 *Edward* III. it was aſſented and eſtabliſhed, "That no Sheriff ſhould tarry in his Bayliwick above one "Year; and then another convenient ſhould be ordained in his Place, "that had Land ſufficient in his Bayliwick."

Pulton's Stat. 14 Edw. III. cap. 7.

But by whom was the Sheriff to be ordained?

Not by the King.

But by the Chancellor, Treaſurer, and Chief Barons of the *Exchequer*, taking to them the Chief Juſtices of the one Bench, and of the other if they be preſent.

Vide 1, S. Rot. Parliam. 17 Edw. III. N°. 32, 54. *where the Sheriffs are ſaid by the King's Anſwer to be made* per Chancellor & Treſor' Juſtices & Barons de le Eſchequer ſolonc la teneur de le Statute.

And that ſhould be done Yearly, on the Morrow of *All Souls*, at the *Exchequer*.

By the Law one would think it was fully ſettled, that Sheriffs ſhould continue in their Office no longer than for a Year.

Yet we find that the Statute was not ſo firmly kept as it ought to have been. For,

Fifthly, In a Parliament held 21 *Edward* III. the Commons complained that the Statute was not obſerved. *A grant damage de noſtre Seigneur le Roy, & de ſon Peuple.*

Rot. Parl. 8. 21 Edw. III. N°. 30.

And

And then prayed that it might pleaſe the King *le dite ordinance tenir & eſtablir deſornavant.*

To this it was anſwered,

" That it pleaſed the King, *que le Statute ſoit garde*; but in caſe a " good Sheriff ſhould be found, then his Commiſſion ſhall be renewed, " and he ſworn anew."

This Anſwer, as it was no doubt of the penning of the King's learned Counſel, ſo it directly proves that the Invention of *non obſtanting* that Statute, was not then found out by them.

But this evaſive Anſwer gave little Satisfaction to the Commons; and therefore,

Pulton's Stat. 28 Edw. III. cap. 7.

Sixthly, In the 28th Parliament of that King's Reign, it was, upon the Complaint of the Commons, ordained and eſtabliſhed, " That " not only the Sheriffs of the Counties ſhould be removed every Year " out of their Office, but that no Sheriff that had been in his Office " by a Year, ſhould abide in the ſame Office the next Year following. " Ay, and that no Commiſſion ſhould be made to him thereof, or re- " newed for the ſame Year following."

By which Act it appears, that the Renewals of the Sheriff's Commiſſion for the Year following, was clearly againſt Law.

And to go on in Order of Time,

Rot. Parliam. 45 Edw. III. No. 39.

Seventhly, In the Parliament of 14 *Edward* III. the Commons prayed that it might be ordained, " That no Sheriff nor Eſcheator ſhould " continue in his Office longer than one Year, as it had therefore been " ordained in Parliament by Statute; and if it ſhould be done other- " wiſe, that a Writ be granted to remove them. And that Sheriffs " and Eſcheators ſhould be Owners of Land of Twenty Pounds a " Year of Inheritance at leaſt, in the ſame County where they are " choſen into Office."

To which Petition it was thus anſwered:

" Let the Statute thereupon made ſtand. And the King wills that " it be put in Execution, according to the Purport thereof."

Rot. Parliam. 50 Edw. III. No. 14.

Eighthly, The Commons in the Parliament 50 *Edward* III. prayed the King, " That he would from thenceforth grant the Offices of " Sheriffs to none for Term of Life, or in Fee, but by Commiſſion " from Year to Year. And that the Deputies of ſuch as were Sheriffs " for Term of Life, or in Fee, might be removed Yearly, as well as " the Sheriffs made by the King's Commiſſion."

ANSWER.

" Let the Statutes thereupon made, be held and kept in all Points."

Ninthly, In the Parliament 7 *Richard* II. the Commons pray, that ſince it was ordained by Statute " That no Sheriff, Under-Sheriff, " nor Eſcheator, were to continue in his Office above a Year, it might " pleaſe the King that the ſaid Statute be firmly held from thence- " forth, without doing contrary thereunto, for the great Eaſe and

" Quiet

" Quiet of all the Realm. And if any Commiſſion had been made " contrary to it, that it ſhould be repealed."

ANSWER.

" *Le Roy voet*, That the Statutes thereupon made be held and kept; " and if any Patent or Commiſſion be made or granted to the con- " trary, that it be repealed.

" Saving always to our Lord the King, the Prerogative and Regality " in this, and in all other Caſes."

This *ſaving* was certainly added by the King's Counſel learned, after the King had given a full Anſwer to the Petition; a Clauſe ſpecious in ſhew, but in Effect and Conſequence moſt dangerous, as we have elſewhere ſhewn; becauſe it has an Operation upon the whole Petition, and upon every Part thereof, for it admitted a Prerogative in the King, above the Laws and Statutes of the Kingdom.

But however it was,

Tenthly, In the next Parliament, which was held the ſame Year, the Commons again prayed, " That ſince it was ordered by Statute that no " Sheriff, Under-Sheriff, or Eſcheator, ſhould continue in his Office " above a Year, it might pleaſe the King that the ſaid Statute ſhould " firmly be held from thenceforth, without doing contrary thereunto, " for the great Eaſe and Quiet of the whole Realm. And if any " Commiſſion had been made to the contrary, that it ſhould be re- " pealed."

Rot. Parliam. 7 Rich. II. p. 2. N°. 23.

To which the King gave the following Anſwer:

Diverſes Eſtatutes ſoient faits en ce caſe devant c'eſt heure les queux le Roy voet que ſoient tenuz & gardez.

Many Statutes have heretofore been made in this Caſe, which the King will that they be held and kept.

And well had it proved for that unhappy Prince had he never changed that Will; but alas! he being ſeduced by ill Court Favourites, and overſtraining at too abſolute a Prerogative for an *Engliſh* King, he fatally came to be charged, among ſeveral others, with the following Articles, in order to his Depoſition. For,

Eleventhly, It was objected againſt him, Article XIII.

Item, Non Obſtante quod ſtatutum erat, quod ſingulis annis officiarii Regis cum juſticiariis & aliis de concilio Regis Vicecomites per omnes Comitatus Regni eligant & nominent Domino Regi, ſecundum quod eorum diſcretioni & conſcientiæ pro bono & utilitate Regni videbitur expedire,

Rot. Parliam. 1 Hen. IV. Les recent & proces dit renunciation du Roy Richard le ſecond.

Idem Rex non nominatos aut electos hujuſmodi, ſed alios pro ſuo libitu voluntatis, quandoque ſuos familiares, quandoque tales quos novit nolle reſiſtere voluntati ſuæ in Vicecomites fieri mandaverit pro ſuo & aliorum commodo ſingulari, ad magnum gravamen Populi ſui, & contra leges Regni ſui perjurium notorie incurrendo.

This ſhews that the Parliament did not think that the Kings of *England* were inveſted with any ſuch Original Prerogatives, as to nominate or elect Sheriffs at their Wills and Pleaſures, contrary to the Form of Election enacted and eſtabliſhed by the Statute of 9 *Edward* II. beforementioned.

But to come to Article XVIII.

Licet ſtatutum fuit & ordinatum, quod nullus Vicecomes officium ſuum occuparet continue ultra annum unum, ſed triennium laberctur antequam ad officium illud admitteretur de novo,

Idem Rex Richardus quandoque pro ſuo commodo ſingulari & quandoque ad proſecutionem aliorum pro eorum commodo & utilitate quoſdam Vicecomites ſtare & remanere permiſit & fecit in eorum officiis continue aliquoties per biennium, & aliquoties per triennium, contra tenorem & effectum Statuti prædicti perjurium incurrendo; & hoc eſt notorium publicum & famoſum.

This is a good Evidence, though in a bad Cauſe:

For it plainly proves, that in thoſe, and preceding Times, it was not taken to be ſo ſure a Principle that the Kings of *England* had ever ſuch a Right inſeparably annexed and inherent in their Royal Perſons, by the Law of Nature and natural Liegance, as to command the Service of every individual Subject at their Pleaſure, and to employ them when, where, and how, they thought fit in their Princely Wiſdoms, *Non Obſtante* any Act of Parliament to the contrary.

However it has been of late declared by our modern Judges, for Reaſons beſt known to themſelves, to be by the Conſtitution of our Laws, the known and ſtanding Rule of the Prerogative.

But that there was ever ſuch ſtanding Rule in the Laws of *England*, ſeems to me to be a great Miſtake.

For it is plain it had its Riſe and Ground either

1. For the Byaſs of Mens Affections. Or,
2. For the Want of the Knowledge of Parliamentary Records. Or,
3. Of a due Conſideration of the *Veteres Scriptores Angliæ*.

All which being compared together, gives us the beſt and moſt impartial Account what our ancient Conſtitution was.

And therefore let us a little further enquire into the Truth of the Matter of Fact, by the Inſpection of another Act of Parliament, and ſo,

Raſt. Stat. 9 Hen. V. cap. 5.

Twelfthly, By a Statute made 9 *Henry* V. it will appear, " That " whereas by the Statute at *Weſtminſter* in the 14th Year of K. *Edw.* III. " it was ordained and eſtabliſhed, That no Sheriff ſhould abide in " in his Bayliwick above one Year; and that then another convenient " ſhould be ſet in his Place, which ſhould have Lands ſufficient with- " in his Bayliwick; and that no Eſcheator ſhould tarry in his Of- " fice above a Year.

" And

" And whereas alſo at the Time of the making of the ſaid Statute, " divers valiant and ſufficient Perſons were in every County of *Eng-* " *land* to occupy and govern the ſame Offices well towards the King, " and all his liege People;

" Foraſmuch that as well by divers Peſtilences within the Realm of " *England*, as by the Wars without the Realm, there was not then " ſufficiency:

" It was ordained and eſtabliſhed, that King *Henry* V,

" By Authority of Parliament,

" Might make the Sheriffs and Eſcheators through the Realm at his " Will, until the End of four Years (except in the Counties where " certain Perſons were inheritable in ſuch manner of Offices) the ſaid " Term to begin at the then next Election of ſuch Offices, notwith- " ſtanding the ſaid Statute made the ſaid fourteenth Year, or any " other Statute or Ordinance made to the contrary.

" And that the ſame Officers were Perſons ſufficient, and of good " Fame.

" And that the Sheriffs had due Allowance from Year to Year, " during the ſaid Term, in their Accounts; and alſo Pardons, that is " to ſay, ſuch as need to have ſuch Pardons,

" And that by the Advice of the King's Counſel, and as Reaſon and " Conſcience required."

It is plain, from the Reaſons mentioned in this Statute,

1. That it was made in the Caſe of Neceſſity, and for publick Good.

2. But if the King was then ſole Judge thereof, and had a Right to diſpenſe with all Acts of Nature, it was then,

3. The higheſt Defect imaginable in the Judges of *Weſtminſter Hall* that they did not tell him, that in Affairs of State, Neceſſity, and publick Good, he could not ſo bind himſelf, but that he might *Non Obſtante* any Act of Parliament whatſoever.

And therefore,

4. *And laſtly*, He ſtood in need of no ſuch Power to be granted him to make Sheriffs for four Years,

By Authority of Parliament;

Since that was a Prerogative which muſt be always left to the King's Pleaſure, and could not be under the Check of any Parliament, if the novel Notions of our modern Lawyers in that Particular were not falſe and abſurd.

But moſt evident it is from theſe introductory Authorities, that the Diſeaſe of *Non Obſtante* Law was not anciently ſo epidemically to the Kingdom, as in after Ages.

And this brings me to the main Queſtion again; namely,

Whether the King by his Prerogative could diſpenſe with the Statute of the 23[d] of *Henry* VI.

Which

Which enacted, That no Man ſhould continue Sheriff, or Under-Sheriff, longer than for a Year;

And that all Patents which ſhould after be made of theſe Offices, ſhould be void, any Clauſe or Word of *Non Obſtante* in any wiſe put or to be put into ſuch Patents notwithſtanding.

A full Account of this Statute is of that Importance, in order to the reſolving of this Queſtion, as we muſt of Neceſſity give it at Length, which next follows:

Raſt. Stat. 23 Hen. VI. cap. 8.

No Man ſhall be Sheriff, or Under-Sheriff, above a Year.

" *Item*, Whereas King *Edward* III. for divers and ſpecial Cauſes, " in his Parliament holden at *Weſtminſter* the *Wedneſday* next after " *Midlent*, the 14th Year of his Reign,

" For that ſeveral Sheriffs in divers Counties in *England*, then be- " ing, had their Offices, ſome for Terms of Years of the King's Grant, " and ſome truſting of longer Continuance in their Offices by Procure- " ment, *&c.* were greatly encouraged, and did take upon them to do " many and divers Oppreſſions to the King's liege People unduly and " evilly, and falſely to ſerve the King and his People,

" Did ordain and eſtabliſh,

" That no Sheriff ſhould tarry and abide in his Office above a " Year,

" And that then another mete and ſufficient Man ſhould be or- " dained in his Place, by the Chancellor and Treaſurer of *England*, " and the Chief Baron of the *Exchequer*, and other, every Year, in " the Morrow after *All Souls*, as it appeared in the Statute.

" And after the ſaid Statute ſo made, by another Statute made at " *Weſtminſter* in the Parliament of the ſaid King, holden the firſt Day " of *May*, in the forty ſecond Year of his Reign,

" He ordained and made, That no Sheriff, nor Under-Sheriff, nor " Under-Sheriff's Clerk, ſhould abide and tarry in his Office over one " Year, as it was ordained by other Statutes made before that Time; " as it appeared more plainly by the ſaid Statute of the forty ſecond " Year.

" And moreover by another Statute made at *Weſtminſter* the fifteenth " of St. *Michael*, the firſt Year of the Reign of King *Richard* II.

" It was ordained and made,

" That no Man which hath been Sheriff of any County by one whole " Year, ſhall be another Time choſen, or put into the ſaid Office " within five Years then next enſuing, except that there be none " ſufficient within the ſaid County, as it appeared more plainly by the " ſaid Statute of King *Richard*:

" And whereas in divers Counties in *England*, after making of the " ſaid Statutes, many and ſeveral Sheriffs had been made, and had oc- " cupied within the ſaid Counties, ſome ten Years and ſome twelve " Years and more, to the great Damage of the King that then was,

" his

" his Progenitors, and their People within the ſaid Counties, contrary " to the ſaid Statutes, and all other good Rules.

" And which was very like, in Time to come, to be to their im- " portable Damage, and open diſheriſon and upholding of Manſlaughter, " Perjury, and great Oppreſſion to many of the King's liege People,

" Conſidering the then great Conſanguinity, Alliance, and Familiars " of the Sheriffs, as well of them as have been before that Time, as " of them which then were in the ſaid Counties.

King *Henry* VI. conſidering the Premiſſes,

Did ordain,

By Authority of Parliament,

" That the Statutes before recited, and every of them, ſhould be duly " obſerved in every County of *England*, the Under-Sheriffs, and all " other Officers within the City of *London* which then were, or ſhould " be at all Times excepted; and ſuch Counties only excepted, in which " divers of the King's People were inheritable to the Office of Sheriffs " at that Day, and alſo ſuch Perſons as had Eſtate of Freehold in the " Office of Sheriff at that Day; and except the Letters Patents made " to them of the Office of Sheriff, and their Under-Sheriff and " Clerks.

" And if any Sheriff or Under-Sheriff, or Sheriff's Clerk, contrary " to any of the Statutes aforeſaid, or againſt the Effect or Intent of any " of them, (except before excepted) that then he which doth ſo occupy " ſhall forfeit the Sum of 200 *l.* yearly, as long as he occupieth con- " trary to the Effect of the ſaid Statutes.

" And that every Pardon hereafter to be made for ſuch Offence or " Occupation, or Forfeiture of Sums before recited, ſhall be void, and " not available.

" And all Patents then made, or to be made, of any of the ſaid Of- " fices for Term of Years, for Term of Life, or Fee Simple, or in Fee " Tail, to any of the King's liege People (except before excepted) " ſhall be void and of no Value

" By the ſame Authority,

" Any Clauſe or Word of *Non Obſtante*, in any wiſe put or to be put " in ſuch Patents to be made notwithſtanding.

And moreover it was farther enacted,

" That whoſoever ſhould take upon him or them to have or occupy " the ſaid Office of Sheriff, by Virtue of ſuch Grants or Patents to " be thereafter made for Term of Years, for Term of Life, Fee Simple, " or Fee Tail, to ſtand for ever, and at all Times, diſabled to be or " bear the Office of Sheriff within any County in *England*

" By the ſame Authority.

" And that every liege Man which will ſue for the ſaid Sum for- " feit againſt him or them, which in ſuch manner do forfeit, ſhall " be received and admitted to ſue an Action of Debt in his own

" Name, the King to have the one half of all that ſhall happen by the " ſame Action to be recovered by ſuch Suit, and he or they that ſo " purſued, to have the other half."

From this Statute it may be obſerved,

1. That the former Part of it was but a Revival, or rather a Confirmation of the Statutes of 14 *Edward* III. 42 *Edward* III. 1 *Richard* II. And that for the future theſe Statutes ſhould be duly obſerved and kept in every County of *England*.

2. That in the latter Part of this Statute it was enacted, that if any Sheriff ſhould execute the Office of a Sheriff contrary to any of the aforeſaid Statutes, or againſt the Effect or Intent of any of them, he ſhould forfeit 2 *l.* yearly.

Now if we reflect a little upon theſe two Obſervations, it will clearly appear, that whatever Diſpenſations had been made before Times of thoſe Statutes, they were all expreſly againſt Law. And therefore a further Penalty was hereby added, That no ſuch illegal Suſpenſions ſhould, for the Time to come, be made uſe of. But,

3. It was alſo ordained, That all Pardons of ſuch Offences or Forfeitures, ſhould be from thenceforth void and not available.

And that,

By Authority of Parliament,

4. And all Patents which had before that Time been made, or ſhould hereafter be made of the ſaid Offices of Sheriffs for Years, Life, Fee Simple, or Fee taile, ſhould be likewiſe void and of no Value, by the ſame Authority.

Any Clauſe or Word of *Non Obſtante* in any wiſe put or to be put in ſuch Patents notwithſtanding.

And Laſtly, If any Man ſhould take upon him to execute the Office of a Sheriff, by Virtue of any ſuch Grants or Patents, he ſhould ſtand for ever diſabled to bear that Office within any County of *England* by the ſame Authority.

Now in the next Place we are to enquire how this Law was interpreted and expounded in ſucceeding Ages; and that I ſhall do by producing the ſolemn Reſolution and Judgments of Five Parliaments.

The firſt ſolemn Reſolution and Judgment was in the 28th Year of *Henry* VI.

Which take from the Parliament Roll in that Year.

Rot. Parliam. 28 Hen. VI. N°. 58.

" Prayen and mekelle beſechen the King's trew liege Men, Shirreffs " of his noble Roialme that were for the Yere laſt paſt, that it like you " of your grete Wiſdome to pray the King our Soveraigne Lord, that " it pleaſe his noble Grace to ordeyn and grant, by the Aſſent of his " Lord's Spirituall and Temporall aſſembled in this preſent Parlia- " ment,

" And

" And by Authority of the ſame,

" That your ſeide Beſechers, and their Under Shirreffs and Clerks, " and everich of them, be quite and diſcharged againſt our ſaid Sove- " raine Lord, and all his liege People, of the Penalties and Forfeitures " of 200 *l.* that they or any of them might fall or renue in by Force " of a Statute made the 24th Yere of the Reigne of our ſaid Soverain " Lord as for occupying and exerciſing of the ſaid Office of Shirreff " longer then a Yere, by as moche from the Morrow next after *All* " *Sowles* Day, in the Yere of the Reign of our ſeide Soveraine that now " is XXVII, to the Feſt of the *Purification of our Lady* then following, " in the Yere of our Soveraigne Lord XXVIII.

" Provided alwey, that by this preſent Act they or none of them " be excuſed or diſcharged of any other Offence or Thing done for " them, or any of them, in their ſeide Office.

" Alwey forſeyn that no Man be amerced for any Suit begann by " him againſt any Perſon, to recover the ſaid Penalty for Occupation " longer then a Yere, by as moche as from the Morrow after the ſaid " *All Soules* Daie, unto the Feſt of the *Annunciation of our Lady* laſt " paſt."

To this Petition of all the Sheriffs of *England* delivered firſt to the Commons, the King gave his

Le Roy le Voet.

Upon Conſideration had of this ſolemn Reſolution of the Parliament of 28 *Henry* VI. we may from thence infer,

1. In general, That it is not true that the Kings of *England* had always that Right to make uſe of the Services of ſuch of their Subjects as they themſelves thought fit; that is to ſay, by putting in or continuing of Sheriffs, Under-Sheriffs, or Sheriffs Clerks in their Offices, longer than a Year.

2. And in particular it was then unknown that the Crown had any ſuch Prerogative contrary to the publick Laws and Statutes of the Kingdom, as theſe were in the Caſe before us. For,

Contra generale Statutum Eccleſiæ Papa non poteſt diſpenſare.

From all which it muſt follow, That the Kings of *England*, as well as their Subjects, were obliged to obſerve all ſuch general Laws which had been ordained by common Conſent and Authority of Parliament, till they were diſpenſed with or repealed by the ſame Authority.

The ſecond ſolemn Reſolution or Judgment of Parliament, was that of the Parliament held *Anno* 8 *Edward* IV.

Which is thus tranſcribed out of *Raſtall*'s *Statutes*.

" *Item*, Whereas in the Fourteenth Year of the Reign of King " *Edward* III. Progenitor of our Sovereign Lord the King that now " is, Raſt. Stat. 8 Edw. IV. cap. 4.

" It was ordained, that no Sheriff ſhould abide in his Office over a " Year; and in the Forty ſecond Year of the Reign of the ſame King

" *Edward*

" *Edward* III. it was ordained, That no Sheriff, nor Under-Sheriff,
" nor Under-Sheriff's Clerk, ſhould abide in his Office above a Year.

" Which Ordinance, amongſt others, in the Twenty third Year of
" the Reign of the late pretended King, in Deed, and not in Right,
" *Henry* VI. in full Parliament were rehearſed,

" And by Authority of the ſame

" It was ordained, That if any Sheriff, Under-Sheriff, or Sheriff's
" Clerk, other than in the ſame Ordinances were excepted, ſhould oc-
" cupy the Office of Sheriff, Under-Sheriff, or Sheriff's Clerk, con-
" trary to any of the ſaid Ordinances,

" That then he that ſhould ſo occupy, ſhould forfeit the Sum of
" 200 *l.* And that every Pardon from thenceforth to be made of ſuch
" Forfeiture of the ſaid Sum ſhould be void, and not available.

" And that every liege Man, that would ſue for the ſame Sum for-
" feit againſt him or them, which ſo ſhould forfeit, ſhould be re-
" ceived and admitted to ſue an Action of Debt in his own Name:
" The King to have the one Half of that that ſhould be recovered by
" the ſaid Action, and he or they that would ſue to have the other
" Half thereof, as in the ſaid Ordinance made the ſaid Twenty third
" Year, doth more fully appear.

" Contrary to which Ordinances, divers Sheriffs, Under-Sheriffs, and
" Sheriff's Clerks of divers Counties of this Realm, in the firſt, ſecond,
" and third Year of *Edward* IV. there being in this Realm great
" Trouble, and Peace not then fully ſtabliſhed, did occupy over a Year,
" ſome of them by a greater Space over a Year, and ſome by a leſs,
" cauſed in divers Parts of this Realm by the ſaid Trouble, and in
" ſome Parts, becauſe that none other Sheriff was ordained by long
" Space after the Year paſt."

Wherefore the King,

1. By the Advice of the Lords Spiritual and Temporal,

2. And at the Requeſt of the Commons,

In the ſaid Parliament aſſembled,

And by Authority of the ſame,

Did ordain and eſtabliſh,

" That no manner of Perſon being Sheriff, Under-Sheriff, or Sheriff's
" Clerk of any County of this Realm, the firſt, ſecond, or third Year
" of his Reign, or any Time or Space within the ſame, for the Oc-
" cupation of the Office of Sheriff, Under-Sheriff, or Sheriff's Clerk,
" in the three Years, or any Part or Space within the ſame, or of the
" ſame, or any of the ſame above a Year, although their Occupation
" were againſt the Ordinances before recited, nor none of them be
" damnified, nor in any wiſe hurt by any Action, Pain, or For-
" feiture in the ſame Ordinances, or in any of them compriſed, at his
" Suit, nor at the Suit of any of his liege People.

" But

" But that the ſame Sheriffs, Under-Sheriffs, and Sheriffs Clerk, and " every of them, of and for every Pain, Action, and Forfeiture pur- " ſued and to be purſued, levied, or forfeited of them, or any of them, " by the King, or any of his liege People, for their occupying of the " ſaid three Years, or any Space or Time within the ſame, be quit " and diſcharged for ever by this Act.

" The ſaid Ordinances, or any of them made before that Time " notwithſtanding."

Now whoever will lay aſide all Prejudices and partial Affections, and calmly and ſteadily conſider this Statute, will certainly never venture their Reputation to affirm,

1. That there were not extraordinary Occaſions for continuing Sheriffs in their Offices above a Year.

2. That the reverend Judges of thoſe Times had not ſo much Learning and Reaſon to know what the immutable Rights of the Crown were, as any that followed them; and had not as great an Occaſion to diſcover what they knew of thoſe immutable Rights, and in particular concerning the diſpenſing Power.

3. But that the diſpenſing Power was the ſame then as now, and known and acknowledged by the Sages of the Law in thoſe Days to be a Prerogative in the Crown, inſeparable as the Beams in the Sun, as we have been told by late Prints; and therefore I would fain have any clear-headed underſtanding Man (if he be at leiſure and is able) to give me a tolerable Reaſon,

1. Why this Statute was made? And then,

2. What was the Force and Availableneſs of it, after it was made?

And if he can produce me one that he will not be aſhamed of, upon a ſecond Reading, I will then confeſs he is a great Man indeed; for he will ſhew himſelf more profoundly ſkilled in the Senates of the Law of Prerogatives, than any of our ancient Kings, Lords, or Commons, nay than the moſt learned Judges that ever ſtudied higheſt for the Service of the Crown in thoſe Ages.

And now I come to

The third ſolemn Reſolution and Judgment of Parliament, which was declared *Anno* 12 *Edward* IV.

And is alſo taken out of *Raſtall's Statutes.*

" Firſt, Whereas by a Statute made at *Weſtminſter* in the Twenty " third Year of the Reign of King *Henry*, late in Deed, and not of " Right, King of *England*, called King *Henry* VI. Raſt. Stat. 12 Edw. IV. cap. 1.

" It was ordained, That no Sheriff ſhould occupy his Office of Sheriff " above a Year upon Pain of 200*l.* except certain Perſons in the ſaid " Statute excepted, as in the ſame is more plainly ſpecified, divers and " many of the King's liege People have been grievouſly damaged, and " greatly delayed of their Suits and Proceſſes every Year, in the Term " called *Michaelmas Term*, as for their Actions, Writs, and Precepts, to

" be returned within the ſame Term after the ſixth Day of the Month " of *November*.

" And though it ſo be that the new Sheriffs were yearly choſen " the Morrow after the Feaſt of *All Souls*, of which new Sheriffs ſo " choſen and appointed, divers of them did refuſe, and divers of them " had not their Patents, nor taken their Oath till long Time after the " End of the ſaid *Michaelmas Term*; by reaſon whereof divers of the " King's liege People and Subjects were greatly endamaged, and delayed " of their Suits, Proceſſes, and Precepts, which were to be returnable " in the King's Courts, at the Days of the Return within the ſame Term " after the ſixth Day of *November*; that is to ſay, at the Days of the " Return called *Craſtino Martini*, *Octabis Martini*, and *Quindena* " *Martini*, becauſe that the old Sheriffs durſt not, nor would not, take " upon them to return any Writ or Precept after the Year that this " Patent did bear Date, for Dread of the Pain contained in the afore- " ſaid Statute, to the great Loſs as well to the King of that that ſhould " grow to him by reaſon of the ſaid Proceſs, as to his liege People " by Delays which they thereby had,

" It was ordained

" By Authority of the aforeſaid Parliament,

" That if any Sheriff of any County did execute any Writ, Precept, " or Warrant, in any of the ſaid Courts of the King, within the ſaid " Term called *Michaelmas Term*, after the ſaid ſixth Day of *November*, " and before any Writ of Diſcharge delivered to him for his occupying " of Sheriffwick, he ſhould not be damnified by Force of the ſaid " Statute, nor charged of the Pain aforeſaid, although that he had oc- " cupied the Office of Sheriff before any of the ſaid Days of Return, " called *Craſtino Martini*, *Octabis Martini*, or *Quindena Martini*."

To this I will ſubjoin

The fourth ſolemn Reſolution and Judgment of Parliament, which was that *de Anno* 17 *Edward* IV.

Pulton's Stat. 17 Edw. IV. cap. 6.

" *Item*, Whereas by a Statute in the laſt Parliament holden at *Weſt-* " *minſter*,

" It was ordained, That the old Sheriff of every County might exe- " cute and return every Writ, Precept, or Warrant in any of the " King's Courts within the Time called *Michaelmas Term*, after the " ſixth Day of *November*, and before any Writ of Diſcharge to him " delivered of his occupying of Sheriff without Grief, Damage, " or Pain, by the ſame Statute remembred, as in the ſame doth " more plainly appear: And becauſe that the Words of the Authority " given by the ſaid Act, to the ſaid old Sheriff, be very eſpecial, and " not general enough for the Commonwealth, purpoſed or intended " by the ſame Act.

" It

" It is therefore ordained,

" By Authority of this Parliament,

" That every old Sheriff of every County remembred in the ſaid laſt " Parliament, from the ſixth Day of *November* next to come, ſhall " have full Authority and Power, as well lawfully to execute and re- " turn every Writ, Precept, or Warrant, in every of the ſaid Courts of the " King, delivered to him as to do and execute every other thing, which " to the Office of Sheriff lawfully appertaineth at all Times, during " the ſaid Terms of St. *Michael* and St. *Hillary*, unleſs he be before " the ſame Time lawfully diſcharged of his Occupation of Sheriff, " without ſuſtaining any Damage, Forfeiture, or Pain, by Cauſe there- " of, any Act, Ordinance, or Proviſion before made to the contrary " notwithſtanding."

I will not tire the Reader with a Multitude of Inferences which might eaſily be drawn from ſo many ſurprizing Circumſtances and new Notices to this preſent Age, as are to be found in theſe two publick Statutes.

I ſhall only obſerve,

1. That it could not be thought in theſe Times to be any Encroachment upon the Imperial Crown, to ſay that it was ſtopped from *non obſtanting* the Statute of 23 *Henry* VI.

2. And that the Judges of *Weſtminſter Hall* had not then made it by Virtue of their expounding Power, to be a Prerogative inſeparably annexed in the Perſon of the King.

And this I ſhall further prove by

The Fifth and laſt ſolemn Proteſtation and Judgment in Parliament, held *Anno* 6 *Henry* VIII.

Which thus follows:

" Where at a Parliament holden at *Weſtminſter* the thirteenth Year " of the Reign of King *Edward* III. amongſt other Things Raſt. Parliam. 6 Hen. VIII. cap. 8.

" It was ordained, eſtabliſhed, and enacted, That no Sheriff, Under- " Sheriff, nor Clerk of Sheriff, ſhould continue or abide in his Office " above one Year; as by the ſaid Statute more at length it doth ap- " pear.

" Which Statute, in a Parliament holden at *Weſtminſter* the twenty " fifth Day of *February*, in the twenty third Year of King *Henry* VI, " among other was rehearſed, and by Authority of the ſame Parliament " then was ordained, That the ſaid Statute, among others, ſhould be " duly obſerved in every Shire of *England*; the Under-Sheriffs and all " other Officers within the City of *London*, that then were, or after " that ſhould be, always excepted, and ſuch Counties only excepted " in which divers of the liege People of the ſaid King, in or to the " Office of Sheriffwick at that Day were inheritable.

" And alſo ſuch Perſons as at that Time had Eſtate of Freehold in " the Office of any Sheriffwick, and Letters Patent to them made of

" the Office of Sheriffwick, and their Under-Sheriffs and Clerks ex-
" cepted.

" And over that by the ſame Statute of *Henry* VI.

" It was ordained and enacted, That if any Sheriff, Under-Sheriff,
" or Clerk of Sheriffs, occupy the Offices of Sheriff, Under-Sheriff,
" or Clerk of Sheriff, contrary to the Statute before recited, or againſt
" the Effect or Intent of the ſame (except before excepted) that then
" he that ſhould ſo occupy, ſhould forfeit the Sum of 200 *l.* yearly, as
" long as he occupied contrary to the Effects of the ſaid Statutes.

" And that every Pardon in Time to come, to be made for ſuch Of-
" fence or Occupation of Forfeiture of Sums, ſhould be void and not
" available; and all Patents made and to be made of any of the ſaid
" Offices for Term of Years, Term of Life, in Fee Simple, or Fee
" Tail, to any of the King's liege People (except before excepted)
" ſhould be void and of no Value by the ſame Authority, any Clauſe
" or Word (*de Non Obſtante*) to be put into ſuch Patents to be made,
" notwithſtanding.

" And that every of the King's liege People that will ſue for the
" Sum forfeited againſt him or them that in ſuch manner ſhall forfeit,
" ſhall be received and admitted to ſue an Action of Debt in his own
" Name; and the King to have the one Moiety of all that, that by
" that Action ſhould be recovered; and he that ſo ſhould ſue ſhall
" have the other Moiety, as by the Statutes, among other Things,
" more plainly it did appear.

It was therefore enacted, eſtabliſhed, and ordained,

1. By King *Henry* VIII.

2. By the Aſſent of the Lords Spiritual and Temporal,

3. And the Commons,

" In Parliament aſſembled, and by Authority of the ſame, That it
" ſhould be lawful for the Sheriffs, or Under-Sheriffs, and all other
" Officers of Sheriffs, that then was, or thereafter ſhould be, within
" the Shire of the Town of *Briſtol*, from thenceforth to continue and
" occupy their ſaid Offices, and every of them, from Year to Year, in
" like Manner and Form as the Under-Sheriffs, and other Officers of
" Sheriffs within the City of *London*, then did and might do, without
" any Penalty or Forfeiture for the ſame.

" The ſaid Act or Acts before expreſſed, or any other Act or Acts be-
" fore that Time had, or made to the contrary, notwithſtanding."

Now if all this be true, as moſt certain it is, what then ſhall we ſay?

Firſt, In the Negative, I will not ſay that four of theſe five ſolemn Reſolutions and Judgments of Parliament have been deſignedly concealed from the general Knowledge of the World, becauſe they, as likewiſe the Act of 9 *Henry* V. before ſet forth, (which authorized that King to make Sheriffs for four Years) are all to be met with in *Raſtall's*

Raſtall's Statute Books, which though few Lawyers have by them, yet fewer I believe have read; and that is the Reaſon why I have given theſe Acts at large. But,

Secondly, In the Affirmative I will ſay this, that in all the Book Caſes of the Law, which have been brought and inſiſted on by the Maintainers and Juſtifiers of the Legality of *Non Obſtantes*, there is not the leaſt mention made of theſe five publick Statutes; and was that fair Practice?

Nor can it be any Plea in Excuſe for Lawyers, but eſpecially for Judges, to ſay that ſome of thoſe Statutes are expired; and therefore they are not bound to take Notice of them, ſince above all that yet hath been aſſured, there are many convincing Arguments to be drawn from temporary and reputed Statutes, to diſcover how the Law was then taken to be in ſeveral weighty Points, which concerned the whole Nation.

But to haſten to a Concluſion;

If we conſider the Matter of this Section ſeriouſly and impartially, it will ſeem like a mockery to tell us that twelve Judges in *Weſtminſter Hall* could in any Age, by the Operation of their expounding Power, inveſt the Crown with ſuch a Prerogative, as to ſuſpend and diſpenſe with general Acts of Parliament made for the publick Good, and that but upon theſe following Grounds:

Firſt, It had been a high Violation of the ancient legal Rights, both of King and Kingdom:

Becauſe by ſuch an aſſumed Power the Judges would have uſurped a deſpotical Juriſdiction over the whole Government.

Secondly, It had plainly outfaced, bafled, and inſulted over the Legiſlative Power, which till of late had ever been acknowledged, to reſide only in King, Lords, and Commons in Parliament.

Thirdly, and Laſtly, Upon this Hypotheſis the very next Day after that that ſupreme Court had ſolemnly ordained and eſtabliſhed publick Laws, the Judges, by Pretext of their expoſitory Reſolutions, might have rendred any, nay all thoſe juſt and uſeful Laws ſo made altogether impotent and ineffectual by *Non Obſtantes*, or might have, upon ſuch powerful Reaſons (which their human Frailties were not able to reſiſt) declared them abſolutely void.

And therefore,

Let the judicious and ingenious Reader now freely judge,

Whether the King, by his Prerogative, could diſpenſe with the Statute of 23 *Henry* VI. which enacted, That no Man ſhould continue Sheriff, or Under-Sheriff, longer than for a Year.

And that all Patents which ſhould after be made of thoſe Offices ſhould be void, any Clauſe or Word of *Non Obſtante* in any wiſe put or to be put into ſuch Patents, notwithſtanding.

SECT. V.

The Caſe in the Year Book Anno 2 Henry VII. *touching that Matter, conſidered and proved by ſeveral Arguments, that, as repreſented and underſtood in latter Times, it could never be good Law.*

Coke, lib. 12. fol. 18.

SIR *Edward Coke*, in his Twelfth Report, makes a Diverſity when the King ſhall be bound by an Act of Parliament, ſo that he cannot diſpenſe with it by any Clauſe of *Non Obſtante*.

" No Act, *he ſays*, can bind the King from any Prerogative, which " is ſole and inſeparable to his Perſon, but that he may diſpenſe with " it by a *Non Obſtante*, as a ſovereign Power to command any of his " Subjects to ſerve him for the publick Weal, and this ſolely and inſe- " parably (he proceeds) is annexed to his Perſon:

" And this Royal Power cannot be reſtrained by any Act of Parlia- " ment, neither in *Theſi* nor *Hypotheſi:*

" But that the King, by his Royal Prerogative, may diſpenſe with " it."

And his Reaſon is, becauſe upon Commandment of the King, and Obedience of the Subject, his Government conſiſts, as it is proved by the Statute of 23 *Henry* VI. *cap.* 8,

" That all Patents made or to be made of any Office of a Sheriff, " and for Term of Years, for Life, in Fee Simple, or in Fee Tail, " are void or of no effect, any Clauſe or Parole, *de Non Obſtante*, put " or to be put into ſuch Patents to be made, notwithſtanding."

And further adds, " Whoſoever ſhall take upon him or them to ac- " cept or occupy ſuch Office of Sheriff, by Virtue of ſuch Grants or " Patents, ſhall ſtand perpetually diſabled to be or bear the Office of " Sheriff within any County of *England*, by the ſame Authority."

And notwithſtanding by this Act

1. The Patent is made void.

2. The King is reſtrained to grant *Non Obſtantes*.

3. The Grantee is diſabled to take the Office, " yet the King may, " *he tells us*, by his Royal Sovereign Power of Commanding, com- " mand by his Patent for ſuch Cauſes as he in Wiſdom doth think " meet and profitable for Himſelf and the Commonwealth, of which " he himſelf is ſolely Judge, to ſecure him and the publick Weal, " as Sheriff of ſuch County, for Year or for Life.

" And ſo it was reſolved by all the Juſtices of *England* in the *Ex-* " *chequer Chamber*, 2 *Henry* VIII."

Thus far out of Sir *Edward*'s *Report Books.*

And next follows the Caſe of 2 *Henry* VII. tranſlated out of *French.*

The Year Book 2 Hen. VII. fol. 6. placito 20. Impreſ. 1597.

" *Michaelmas Term*, 2 *Henry* VII.

" In the *Exchequer Chamber* before all the Juſtices, it was ſhewn " for the King, how that King *Edward* IV. by his Letters Patents had " ordained the Earl of *N*---- Sheriff of the ſame County, and granted " the Office of Sheriff of the County aforeſaid to the ſaid Earl for " Term of his Life, with all the other Offices belonging to it; render- " ing for it to the King, in his Exchequer, the yearly Sum of 100 *l.* " without any Account, or any other Thing to be paid for it.

" And the Queſtion was, whether this Patent was good, and like- " wiſe how this Patent was to be conſtrued.

" And as to the firſt Point the Juſtices held the Patents to be good, " for it was ſuch a thing as might very well be granted for Term of " Life, or Inheritance, as divers Earls had Sheriffwicks by Inheritance, " and that began by the King's Grant.

" Then was ſhewn a Reſumption, and alſo a Proviſo, for *Henry* " Earl of *N*----, ſo that the Patent remained in its Force."

Radcliff ſhewed the Statute of *Annis* 28 *Edward* III. *cap.* 7. and 42 *Edward* III. *cap.* 5.

" That no Sheriff ſhould continue above a Year; and though he " had a *Non Obſtante*, and this notwithſtanding that the King had al- " ways his Prerogative, as well as of the Value and Certainty of the " Lands and other Things granted by the King, and of Woolls tranſ- " ported, and of Charters of Murthers, and many other Caſes where " the Statutes are, that Patents which favour theſe Things ſhall be " void, yet the King's Patents are good with a *Non Obſtante*; but " without *Non Obſtante* the Patents are void, by reaſon of the Sta- " tutes.

" So here the Patent is without a *Non Obſtante.*

" But as to the ſecond Point, ſeveral of the Juſtices held that by " that Word *Officium Comitatus*, with that Word in making him Sheriff " of the County, that *eo ipſo* he is Sheriff.

" He is intitled to collect and gather the Profits of the County; " and when the Patent goes further, *reddendo ad Scaccarium annuatim* " 100 *l. ſine aliquo alio inde reddendo*, that this tantamounts that he has " all the County for his Farm, without rendering any Account thereof.

" *Brian* and *Cateſby* ſaid, That this Word *reddendo* was only for the " Office, and not to the Profits, *quod nota.*"

" For *Cateſby* ſaid, That if the King grant Lands or Tenements for " Term of Life, and doth not ſay without *aliquo inde reddendo*, that " he ſhall anſwer for the Iſſue to the King.

" The ſame Law of a Ward, to which it was ſaid, That when the " King by his Letters Patents grants Lands, or Tenements, in Fee

" Tail,

" Tail, or for Term of Life or Years, without any Thing more, " that he is not to account for his Farm, nor for any thing elſe.

" But it is otherwiſe of a Ward, for there he grants or commits " the Ward to the Defendant, in which Caſe he is obliged to anſwer " to the King.

" So it is with a Sheriff of a County, for he is but the Commiteé " of the King.

" So in theſe Caſes he ought of Neceſſity to have thoſe Words & " *Tenendo*, and without rendring any Account or other Thing thereof.

" But we ought to ſee what Things appertain to the Office of " a Sheriff.

" *Brian Radcliff* ſaid, That the Sheriff, as ſoon as he is made " Sheriff, is accountable to the King for all Farms, Rents, Iſſues, and " Profits of the County, which run in Account *ſub nomine Vicecomitis*; " but of the Streets of *Greenwall*, and ſuch others, the Sheriff is not " chargeable as Sheriff at firſt, or any Time after, unleſs the Sum- " mons come to him out of the *Exchequer*; and then when he has " them, he is chargeable and accountable as a Sheriff is.

" Then all the Judges, except *Brian* and *Cateſby*, held that the Earl " by thoſe Letters Patents of all thoſe Things which belong to the Office " of Sheriff is at the firſt diſcharged of any Account; but of Green Wax " and other Things he ſhall account, notwithſtanding his Patent.

" For *Huſſey* ſaid, That this is ſpecial Matter which came for the " Land, and the Grant of the King ſhall be taken ſtrictly againſt him, " of common Intendment, and thoſe that full appears; as if the " King grants to one all the Iſſues and Amerciaments of all his Te- " nants within ſuch a Seigniory, yet if this Tenant hold of the King, " and alſo of another Lord, ſo that he is not the entire Tenant of the " King, the Grant of the Iſſues and Fines he ſhall not have.

" And if his Tenant be royally amerced, the King ſhall have them, " and yet they are Amerciaments; but they are ſuch Amerciaments.

" *Brian, Juſtice*, demanded of *Brian R*----, what is a Royal Amer- " ciament?

" Who ſaid, That when a Sheriff Coroner, or other great Officer " of the King, be amerced by the Juſtices for their Miſdemeanour in " their Office; that was called Royal Amerciament."

" *Fineux* and *Huſſey*, Thoſe the Grantee ſhall not have by the Name " of the Amerciaments, ſo in ſuch Caſes the Grant ſhall inure to " the Grantee for common Things and Intendements; and the King " ſhall have the Specialties *ut ſupra*.

" *Mes pur ceo que le fuit le primer temps les Juſtices & Serjeants* " *& l'Attorney le Roy agre que ils ſtudent bien pur le matter, & ils* " *ſerra oies, & ceo que ils diont fuit pur nient car ils voile eſte a lour* " *libertie a dire que ils voile, & pens pur riens que ils uſſent a ore* " *dit.*"

This Caſe, as it is given us in Print, is dark and confuſedly reported, and has far more confounded Mens Judgments than rectified them.

For upon this Caſe Sir *Edward Coke*, and his Tranſcribers, have founded ſeveral Prerogative Principles, which, for any thing I can find, are not to be met with in our ancient Law Books. As

Firſt, That the Kings of *England* had Sovereign Power, ſole and inſeparable, annexed unto their Perſons, to command any of their Subjects to ſerve them for the Publick Weal, of which they themſelves are ſolely Judges; becauſe upon Commandment of the King, and Obedience of the Subject, their Government conſiſted.

Secondly, That this was proved by the Statute of 23 *Henry* VI. in the Caſe of Sheriffs. And

Thirdly, By the Reſolution of all the Judges in *England*, *Anno* 2 *Henry* VII. in the *Exchequer Chamber*.

Now whether all this was good Law or not, comes next to be conſidered.

As for the firſt Principle,

That the Kings of *England* had a Sovereign Power ſolely and inſeparably annexed to their Perſons to command any of their Subjects to ſerve them for the Publick Weal, of which they themſelves were ſolely Judges; becauſe upon Commandment of the King, and Obedience of the Subject, their Government conſiſted.

I hold that as it hath been underſtood in later Times, it could never be good Law.

And to maintain my Opinion, I ſhall rely upon theſe for the Authorities and Reaſons following:

I. Sir *Edward Coke* himſelf, in his *Second Inſtitutes*, tells us, "That "he could not let paſs a Reſolution of all the Judges of *England* in the "34th of *Henry* VI. which grew upon this Occaſion." Art. ſup. Chart. c. VIII.

Upon a Reference by the King's Privy Council to Sir *John Forteſcue*, and Sir *John Priſat*, Chief Juſtices, and to the reſt of the Juſtices, concerning a Sheriff conſtituted by the King himſelf, it is thus entred in the *Council Book* recorded 3° *Martii Anno* 34 *Henry* VI. as followeth in theſe Words:

"Upon a Demand that my Lord Chancellor made to the Chief "Judges, and to the Remnant of the Judges,

"How that the King's Laws, neither Juſtice might not be exe- "cuted in *Lincolnſhire*, becauſe there was no Sheriff there; and that "the King, by his Letters Patents under his Great Seal, had deputed "certain Men for to have been Sheriffs there, what them ſeemed "ſhould be done in this Behalf, ſo that the King's Laws and Juſtice "might been executed in that Shire, as it is executed in other Shires "of *England*.

" The two Chief Juſtices the ſame Day came unto my Lords of the " King's Council in the *Star Chamber*, and upon the aboveſaid Demand " ſaid, That them ſeemed, and ſo it ſeemed to the Remnant of " the Judges, That the King did an Error when that he made another " Perſon Sheriff of *Lincolnſhire*, than was choſen and preſented unto " his Highneſs, after the Effect of the Statute in ſuch Behalf made.

" And though that he that ſo was made Sheriff would not take it " upon him, ought not to be ſo puniſhed, and to make alſo a great " Fine for his Diſobeiſance, as that if he had been one of the three " Perſons that were choſen to be Sheriffs after the Tenor of the Sta- " tute.

" And furthermore them ſeemed, That the King ſhould have re- " courſe to the three Perſons that were choſen after the Tenor of the " Statute, and make one of them Sheriffs by Letters Patents, bearing " Date either at the Day of the Election of them, or elſe at *Michael-* " *mas*.

" And though that ſithence the ſaid Election any of them have got " him an Exemption that he ſhould not be made Sheriff, yet them " ſeemeth that he ſhould be charged to take the ſaid Office upon " him.

" And furthermore them ſeemeth, That if none of the ſaid three " Perſons choſen be made, that then ſome other thrifty Man dwelling " in ſome foreign Shire, be entreated to occupy the ſaid Office for " this Year and the next Year, that in eſchewing of ſuch Inconveni- " encies, that the Order of the Statute in ſuch Behalf made be obſerved " and kept.

" To the King our Sovereign Lord, and to the Lords Spiritual and " Temporal of his moſt noble Council.

" Beſeecheth meekly your humble liege Man *John Tempeſt*, Knight, " to grant your Letters Patents under your Privy Seal to be made in " Form following, and he ſhall pray to God for your moſt noble " Eſtate.

" *HENRY, &c.* to the Treaſurer and Barons of our *Exchequer*.

" Foraſmuch as our truſty and well-beloved *John Tempeſt*, Knight, " by us ordained and deputed to be Sheriff of *Lincolnſhire* for this " Year, hath, for certain Cauſes for him alledged, utterly refuſed to " take upon him the Charge of the ſaid Office, without that it like " us to purvey for him, that he take no Loſs in the ſaid Office, like " as we had done now in late Years for others that have been Sheriffs " of the ſaid Shire,

" We conſidering the Hurts and manifold Inconveniencies that ſhould " enſue not only to us, but alſo to our Subjects, namely, in letting of their " Suits at Common Law, if the ſaid Shire ſhould long ſtand deſtitute " of a Sheriff, will, and by the Advice of our Council have granted to

" the

" the ſaid *John*, that he ſhould occupy the ſaid Office by Approvement,
" and ſo account for this Year.

" And therefore we charge you, that in his Accounts that he ſhall
" be to yield unto Us becauſe of his ſaid Office, ye charge him not
" with the whole Extent of the ſaid Shire, that is to ſay, of theſe two
" Farms called *de Reman. firmæ Com. poſt terras dat.* and *firmæ Com. nu-*
" *mero*, and alſo of theſe particular Profits called *de Firmis Ballivorum*,
" *auxilium Vicecom. Francipleg. Certi fines*, Iſſues, Profits, nor none
" other things to be by him raiſed by Virtue of the Summons of the
" Pipe, or of the Green-wax in the ſaid Shire, ſave only of ſuch Par-
" cels as he with his true Diligence ſhall arrere and gather.

" And that of all the Remnant that ſhall come and grow unto
" Us of the ſaid Shire, ye utterly and clearly diſcharge and aequit the
" ſaid *John Tempeſt*, Knight, Sheriff, by his Oath, or by the Oath of
" his Deputy, ſufficient accounting for him, without any Iſſue, Tryal,
" or Averment, betwixt Us and him to be had therein. Given
" at, *&c.*

T. Cant. *R. Saliſbury.*
W. Ebor. *R. York.* *R. Sancti Johannis.*
T. London. *Stourton.*
J. Lincoln. *W. Faucomberge.*

" XIX^mo *Die Anno* 34 *apud Weſtmonaſterium in Camera Stellata* INDORS-
" *Rex de aviſamento Conſilii voluit & mandavit, quod Cuſtos Privati* MENT.
" *Sigelli ſui Literas ſub eodem Sigillo fieri faceret, ſecundum tenorem*
" *infra ſcriptum, dominis ſe ſubſcribentibus, ut patet, attent. ut Hen-*
" *ricus Ratford, qui fuit Vicecomes anno præterito ejuſdem Comitatus,*
" *& nonnulli alii Vicecomites retroactis temporibus eodem modo habue-*
" *runt & occupaverunt.*

T. KENT.

" Which aboveſaid unanimous Opinion being the adviſed Reſolu-
" tion of two ſuch famous Juſtices, and of all the Judges of *Eng-*
" *land*, and finding it in the Council Book,"

Sir *Edward Coke* tells us, he thought it fit to be publiſhed in ſuch Words as it is here ſet down, as a ſure and juſt Expoſition of the Statutes concerning the making of Sheriffs.

Now if this unanimous Opinion and adviſed Reſolution of two ſuch famous Chief Juſtices as Sir *John Forteſcue* and Sir *John Preſcott*, and of all the Judges of *England*, delivered in the 34th of *Hen.* VI. was good Law,

1. That the King had done an Error when he made another Perſon Sheriff, than was choſen and preſented to him after the Effect of the Statute 9 *Edward* III.

2. That if he that was ſo made Sheriff by the King, and would not take it upon him, was not to be puniſhed for his Diſobedience,

Then was the King's Prerogative bound by that Statute, and from thence it will follow, that he had not ſuch a Sovereign Power ſole and inſeparable annexed to his Perſon, as to command any Man to ſerve him in the Office of a Sheriff (though for the Publick Weal) that has not legally been choſen according to the Form of the Statute made for the annual Election of Sheriffs by the Chancellor, Treaſurer, Barons of the *Exchequer*, and by the Juſtices.

And then the Concluſion muſt be, that Sir *Edward Coke*'s Principle was far from being current Law in thoſe Days, and that too upon his own ſhewing. But,

Sir Brian Stapleton's *Caſe touching his being made Sheriff of* Lincolnſhire, Anno 27 Hen. VIII.

II. My next Authority is the Caſe of Sir *Brian Stapleton*, who refuſed to be Sheriff of *Lincolnſhire*, but upon certain Conditions; the Caſe fell out to be in the 27th Year of *Henry* VIII. and was as follows:

Henricus Dei Gratia Rex Angliæ & Franciæ & Dominus Hiberniæ, omnibus, ad quos præſentes Literæ pervenerint, ſalutem.

Inſpeximus tenorem cujuſdem Acti Conſilii noſtri inter cætera memorandum in officio Privati noſtri Sigilli remanente in hæc verba.

" Foraſmuch as of old Time it has been uſed and accuſtomed thro' " this Land, that every Year at ſuch Times that the Sheriffs ſhall be " changed, and other new ordained and made, three Perſons be named " and preſented unto the King's Highneſs, whereof it ſhall pleaſe him " to chuſe and ordain one to be and occupy the Office of Sheriff of " ſuch County, for which he is preſented and named.

" And it is ſo that *Brian Stapleton*, named this Year to be Sheriff " of the County of *Lincoln*, hath refuſed to take the Charge upon " him for certain great Cauſes by him alledged in that Part, ſo that " without other Proviſion the ſaid County was like to ſtand deſtitute " of a Sheriff, unto great Hurt as well of the King for default of re- " turn of his Writs, gathering up of the Iſſues of the ſaid County, " as other Executions of his Law in that Behalf, as unto the Com- " mons of the ſaid Shire in their Suits, and otherwiſe.

" Wherefore to eſchew all the Perils, Hurts, and Inconveniencies " that might follow thereof, to redreſs, reform, correct, and amend all " ſuch Defaults as were like to enſue thereof, and to the Intent that " the Execution of Law may be had and kept in all Points as it " ought, and of old Time has been accuſtomed.

" The King, by the Advice of the Lords Spiritual and Temporal " at *Weſtminſter*, in the *Council Chamber*, in Time of Parliament, the " twenty fifth Day of *February*, in the Year 1527, conſidering ſpeci- " ally that a great Part of this Year is paſſed,

" Hath

" Hath intreated the ſaid *Brian Stapleton*, named for Sheriff of the " ſaid County, as above is ſpecified, to occupy the ſaid Office of " Sheriff for this Year, to the which he hath agreed him; and to do " all his Devoir and Diligence for to arrere and gadder, as well as ſuch " Duties and Profits coming of the ſaid County, that is to ſay, *Auxi-* " *lium Vicecomitis*, *Franci plegii* Fines, and all other Duties pertaining " unto the King from the Beginning of the Year, hitherto not gathered " nor raiſed, as from thenceforth unto the End of this Year, and to " do and execute truly all that belong to the ſaid Office.

" So always that the ſaid *Brian* may have a competent Reward for " his Labour, and a Warrant ſufficient to have his Fee allowed upon " his Account of the Iſſues and Revenues by him reered of the ſaid " County.

" And alſo that the ſaid *Brian* have a ſufficient Warrant to the " Treaſurer and Barons of the King's *Exchequer*, that what Time the " ſaid *Brian* ſhall account for his ſaid Office, that they charge him " not with the whole Extent of the ſaid Shire; that is to ſay, of " theſe two Farmes called *de Rem. Firm. Comitatus poſt terras dat* " *form. Com. numero*, and alſo of theſe particular Profits called *de Firm.* " *Ballivorum auxilium Vic. Franci plegii*, *Certi fines*, Amerciaments, " Iſſues, and Profits, nor none other Things by him to be raiſed by " Virtue of Summons of the Pipe or of Greenwax in the ſaid Shire, ſave " only of ſuch Parcels as he with his true Diligence may arrere and gad- " der, and of all the Remnant to diſcharge him, utterly and clearly by his " Oath; and by the Oath of his ſufficient Deputy for him, account- " ing upon his ſaid Account without Iſſue, Tryal, or Averrment, to " be taken between the King and him.

" And alſo that the ſaid *Brian* be not vexed, grieved, nor troubled " by any State or Perſon, for any Annuity or Charge granted by the " King, to be received of the Iſſues and Profits of the ſaid Sheriffwick " during the Time that the ſaid *Brian* ſhall account for the Iſſues and " Profits of the ſaid County.

" And that there may be a Warrant under the King's Privy Seal " to the Treaſurer and Chamberlains of the King's *Exchequer*, com- " manding them that there be new Aſſignments made to be received " of the ſaid Sheriffwick, during the Time that the ſaid *Brian*, his " Heirs, and Executors, be diſcharged and acquitted againſt the King, " his Heirs, and Executors in his ſaid *Exchequer*, for evermore after " his Account made.

" *Nos autem tenorem prædictum ad omnem effectum, qui exinde ſequi* " *poterit per has literas noſtras, noſtro ſub privato ſigillo patentes duxi-* " *mus exemplificandum. Dat. in Palatio noſtro Weſtmin. viceſimo ſexto* " *die Februarii Anno Regni noſtri viceſimo octavo.*"

This again I take to be to the Purpoſe. For,

1. Although Sir *Brian Stapleton* was one of the three that was named and preſented to the King to be Sheriff of *Lincolnſhire*, and was choſen by him, yet it is evident that Sir *Brian Stapleton* refuſed to take the Charge upon him.

2. And that gave Occaſion to the King, a Parliament then ſitting, to adviſe with no leſs a Council than the Lords Spiritual and Temporal about that Matter; upon which Deliberation,

3. Sir *Brian Stapleton* being entreated by the King to occupy the ſaid Office, he at laſt agreed thereto,

4. Yet under certain extraordinary Conditions.

But if the Royal Sovereign Power was ſuch as before hath been laid down by Sir *Edward Coke*'s Principle,

How then, I pray, come theſe ſo ſolemn Proceedings to be made in this Caſe?

Was it not by that Principle manifeſt and notorious that the King was ſole Judge who was fit to ſerve the Crown? and was it not then the indiſpenſable Duty of Sir *Brian*, as a Subject, to pay his Service to it?

His Refuſal therefore to be Sheriff was a high Diſobedience.

And his offering to make a Bargain with the King a very great Preſumption, for which he ought to have been immediately proſecuted upon an Information in *Weſtminſter Hall*, and ſoundly fined for ſuch his bold Miſdemeanor.

But can any Footſteps be ſhewn of ſuch Proſecutions?

No certainly.

And the Reaſon is plain, becauſe Informations of that Nature were not brought into Practice by Mr. Attorney General in thoſe Days, there being indeed no Colour of Law to warrant them.

But it will be objected from Sir *Edward*, that

The King was ſole Judge of the Service of his Subjects, becauſe upon Commandment of the King, and the Obedience of the Subject, the Government conſiſted.

To this I anſwer,

That the Term *Commandment* is too general, and therefore the Reaſon which is grounded upon it cannot be concluded; for the Word *lawful* is left out, which ought not to have been done, and that upon theſe few Reaſons:

The Firſt Reaſon is

From the general Conſtitution of our *Engliſh* Monarchy, which is a Government according to the Law of the Land; not by the Law of Luſt, but by the Laws of the Land.

Bagſhaw's Rights of the Crown of *England*, as it is eſtabliſhed by Law, *dedicated to King* Charles II. p. 101.

By legal, not Arbitrary, Power.

And this makes the King of *England* the greateſt and moſt compleat Monarch in the World,

That

That the Crown of *England* is incorporated and interwoven with the Laws of the Land.

For it is the groſs Ignorance of thoſe Men, that make Monarchy to conſiſt in Exemption from Laws.

Such a Monarchy is rather to be called diſſolute than abſolute, impotent than powerful, tyrannical than regal.

The ſecond Reaſon is

From the ancient Coronation Oath which Kings have always been obliged to take, wherein they ſolemnly ſwear to obſerve and keep *Juſtas Leges & Conſuetudines Regni Angliæ.* Sacramentum Regum Angliæ die Coronationis ſuæ præſtitum.

The third Reaſon is

From the Rule of Law given us by *Bracton*, who ſaith, *Nihil aliud poteſt Rex Angliæ in terris, cum ſit miniſter Dei & ejus vicarius, niſi id ſolum quod de jure poteſt.* Bracton, lib. 3. cap. 9. fol. 107.

The Fourth Reaſon is

From the Statute of 7 *Edward* I. Pulton's Stat. 7 Edw. I.

Which enacts, That every Man ſhould come to Parliament without Force of Armour, and thoſe that did contrary ſhould be puniſhed, but here according to the Laws and Uſages of the Realm.

And hereunto the Statute ſays all were bound to ſerve the King their Sovereign Lord, at all Seaſons when Need ſhould.

The Fifth Reaſon is

From the Statute of the 15th of *Edward* III. which hath theſe Words, *viz.* Raſtall's Stat. 15 Edw. III. cap. 1.

" We command all our Juſtices, that they ſhall from henceforth do " even Law and Execution of Right to all our Subjects, rich and " poor, without having Regard to any Perſon, and without letting " to do Right for any Letters or Commandments which may come " to them from us, or from any other, or by any other Cauſe.

" And if that any Letters, Writs, or Commandments come to the " Juſtices, or to other deputed to do Law and Right to the Parties, " the Juſtices, and others aforeſaid, ſhall proceed to hold their Courts " and Proceſſes where the Pleas and Matters be depending before " them, as if no ſuch Letters, Writs, or Commandments were come " to them."

Which Law is a ſolemn Confirmation of this Maxim, that *Præceptum Legis eſt præceptum Regis.*

The Sixth Reaſon is

Becauſe the King of *England* could neither ſpeak, nor act, nor judge, nor execute, but by their Writs, or by their Laws, by their Judges and Miniſters, who were all ſworn to judge aright. Bagſhaw's Rights of the Crown, pag. 105.

For theſe Kings could do nothing in their own Perſons *(judicialiter,)*

If they ſat in Judgment, as they might do in any of their Courts in *Weſtminſter Hall*, as King *Richard* II. *Edward* IV. and other Kings did,

Coke, lib. 12. fol. 64. did, yet they never pretended to pronounce Judgment themſelves, but the Court did it.

And therefore it was always ſaid,

Ideo conſideratum eſt per Curiam,

That being the proper Office of the Judges, who were to make the Law the Rule and Meaſure of all their Proceedings.

The Year Book, 39 Hen. VI. fol. 14. For it would be ridiculous to ſay that the King was bound to do Law and Right to all his Subjects, and yet that his Miniſters and Judges ſhould be exempted from the like Obligation.

No, we all know the old Maxim,

Lex Angliæ non patitur abſurdum,

And therefore no Prerogative ought to hold in ſuch a Caſe; for that would make all Judges and Miniſters to be above the King. Again,

Fitz Herb. Abridg. fit monſtrance de faits 182 prim. 16 Hen. VI. 2 Term. Mich. 1 Hen. VII. placit. 5. Huſſey Chief Juſtice de ſoit que Sir John Marſham deſoit al Roy Edw. le IV. que il ne poet areſtre un home ſur ſuſpition de treaſon, ou felony, ſuome aſſuns de ſon Lieges puiſſent pur ces que ſit fare tort le partie ne poet lanes action.

The King of *England* cannot arreſt any.

And the Reaſon which our Law Books give is, becauſe, if the Subject ſhould be wrongfully impriſoned, no Action of falſe Impriſonment lay againſt the King; and ſo by Conſequence the King would be made a wrong Doer, which the Law of *England* would never allow.

And therefore it is one of the higheſt Prerogatives of the Crown that the King can do no Wrong, but his Miniſters may, and be puniſhable for it, as hath been obſerved before.

The Seventh and Laſt Reaſon

Shall be grounded upon a Statute * made *Anno* 4 *Henry* VII. intituled, *All Juſtices of Peace ſhall execute their Commiſſion, redreſs Injuries, and maintain the Laws.*

The Purport whereof is as follows:

1. It tells us, " That the King having conſidered that by the Neg-
" ligence, miſdemeaning Favour, and other inordinate Cauſes of Juſtices
" of the Peace, the Laws and Ordinances made for the Politick Weal,
" Peace and good Rule of the ſame, and for the Profit, Surety, and
" reſtful Living of his Subjects of the ſame, were not duly executed
" according to the Tenour and Effect that they were made and or-
" dained for.

" Wherefore his Subjects had been grievouſly hurt, and out of Su-
" rety of their Bodies and Goods to their great Diſpleaſure.

" 2. Becauſe to him nothing was more joyous than to know his
" Subjects lived peaceably under his Laws, and to increaſe in Wealth
" and Proſperity.

3. It alſo tells us, " That the King would not let for any Favour,
" Affection, Coſt, Charge, nor none other Cauſe, but he would ſee the
" Laws have plain and true Execution, and his Subjects live in Surety
" of their Lands, Bodies, and Goods, according to the Laws.

" 4. Becauſe

* Pult. Stat. 4 Hen. VII. cap. 12.

" 4. Becauſe that a great Part of the Wealth and Proſperity of this " Land ſtood in that, that the Subjects might live in Surety under the " King's Peace in their Bodies and Goods, which was to be had by " the due Execution of the ſaid Laws and Ordinances.

5. *And laſtly*, " So as thereby all Miſchiefs might be avoided, his " Subjects might increaſe in Wealth and Proſperity to the Pleaſure of " God."

This Act of Parliament, as it is quoted by Sir *Edward Coke* in his *ſecond* Inſtitutes, ſo it being added to the foregoing Reaſons, leaves no Room at all to queſtion this Concluſion. Coke's 2d Inſtitute, f. 170.

That the Word *lawful* ought to have been inſerted before the Term Commandment by Sir *Edward*, and then I do agree that

Upon the lawful Commandment of the King, and the Obedience of the Subject, the Government of *England* did ever conſiſt.

And then the Conſequence will be, that the King himſelf was not ſole Judge of the Service of his Subjects, which was contrary to the Laws and Ordinances made for the Publick Peace and good Rule of the Kingdom, and the Profit, Surety, and reſtful Living of the Subject.

All which is no more than what was declared Law of the Land near four hundred Years ago.

For by another Statute made *Anno* 34 *Edward* I, ſon to *Henry* III, it was granted to Clerks and Lay-men, " That they ſhould have their " Laws, Liberties, and free Cuſtoms, as they had uſed to have the " ſame at any Time when they had them beſt. Pulton's Stat. 34 Edw. I. cap. 4. *All Laws, Liberties, and Cuſtoms, confirmed to the Subject.*

" And that if any Statutes had been made, or any Cuſtoms brought " in by that King or his Anceſtors to the contrary, they ſhould be " void and fruſtrate for evermore."

In the next Place we are to conſider Sir *Edward Coke*'s ſecond Principle, *viz.*

That the Sovereign Power is ſolely and inſeparably annexed unto the Perſon of the King, to command any of his Subjects to ſerve him for the Publick Weal, of which he himſelf was ſole Judge, was proved by the Statute of 23 Henry VI. *in the Caſe of Sheriffs.*

It is but too certain and obvious to any ſober thinking Man that in this laſt Century, both Divines and Lawyers, have garniſhed their Writings with a vaſt Medley of abſtruſe and affected Expreſſions touching the Prerogative Royal, which were not known, much leſs made uſe of, in former Times. *An Abuſion of Law.*

From which one may very well conclude that theſe Authors were either aſhamed of the puny Conceptions of thoſe who wrote before them, or elſe they thought them very deficient in expreſſing their Loyalty to the Crown, becauſe it was not declared, as it has been ſince, without Reſerve.

By means whereof theſe Authors have peſtered the World with new Forms and Modes of Speaking, which neither are comprehenſible or intelligible to themſelves or their Readers here in *England*.

As for the Inſtance,

Our Chronicles ſay that *Henry* VI. was but nine Months old at the Time when his Father *Henry* V. died, and when he himſelf was proclaimed King.

Can any Man comprehend how *Henry* VI. could himſelf be ſole Judge? Or can any Man underſtand how the Sovereign Power, ſole and inſeparable, could, according to Sir *Edward Coke*'s Principles, be annexed unto the Perſon of that Royal Babe, not ten Months old?

The like Caſe may be put of a lunatical King, whenever ſuch a one ſhall happen here, as it hath fallen out in other Kingdoms.

Several other Caſes might eaſily be mentioned, which abſolutely overthrow and confute many of thoſe extravagant Notions which of late Years have been advanced touching an unhoopable Prerogative of an imperial perſonal Sovereignty.

But, I think, theſe are enough of all Conſcience to prove Sir *Edward*'s Poſition to be an unintelligible and an incomprehenſible Principle.

But not to digreſs too much.

The Year Book, 2 Hen. VII. As for the Caſe of Sheriffs, it was ſhewed for the King, before all the Juſtices in the *Exchequer Chamber*, how King *Edward* IV, by his Letters Patents, had ordained the Earl of *Northumberland* to be Sheriff of that County for his Life, with all the other Offices belonging to it, rendering to the King in his *Exchequer* 100 *l.* yearly, without any other Account.

Now the Queſtions were,

Firſt, Whether the Patent was good?

And *Secondly*, How it was to be conſtrued?

And as to the *Firſt* Point, the Juſtices held the Patents good, for that the Office of a Sheriff was ſuch a Thing as might be granted by the King for Term of Life or Inheritance.

And they grounded their Opinions upon three Reaſons, *viz.*

Becauſe divers Earls had Sheriffwicks by Inheritance, which begun by the King's Grant.

Secondly, Upon ſhewing of an Act of Reſumption, wherein there was a Proviſo for the Earl of *Northumberland* of his Patent.

And *Radcliff* ſhewed the Statutes of 28 *Edward* III, *cap.* 7, and 42 *Edward* III, *cap.* 5, That no Sheriff ſhould continue above a Year, although he had a *Non Obſtante*.

And this, notwithſtanding, the King ſhould have his Prerogative.

This is the Subſtance of what either the Juſtices or *Radcliff* ſaid, with reference to *Non Obſtantes*.

So

So that in that Caſe there were three Points worthy Conſideration.

Firſt, The Time when the Caſe happened.

The *Second*, The Opinion of the Juſtices.

And the *Third*, What *Radcliff* ſhewed.

Firſt, To the Time when this Caſe happened.

It was the 2d of *Henry* VII.

The Year Book, 2 Hen. VII.

His Mother was then living, as alſo his Wife, the Daughter of *Edward* IV, ſo that he could have no Colour of Title to the Crown but by Power.

It is no Wonder therefore if his *quamdiu placuerit* Judges, to ſtrengthen his Hands, ſtretched a Point of Law, and inveſted him with a Prerogative that had no Foundation before, either in Senſe, Reaſon, or Law.

For *Forteſcue*, who was Chief Juſtice of the *King's Bench*, *Anno* 20 *Henry* VI, and ſo continued for many Years, and died in *Edward* the Fourth's Reign, tells his Prince,

John Forteſcue conſtitutus Capital Juſtic. B. R. apud Weſtm. 21 Jan. Rot. Parliam. 20 Hen. VI. pars 1. memb. 10.

Præterea in quolibet Comitatu eſt Officiarius quidem unus Legis, Vicecomes appellatus, qui inter cætera ſui officii miniſteria omnium mandata & judicia Curiarum Regis in Comitatu ſuo exequendo exequitur.

Cujus officium annuale eſt, quod ei poſt annum in eodem miniſtrare non licet; nec duobus tunc ſequentibus annis ad idem officium reaſſumetur.

Now if a Negative Argument will hold in any Caſe, why not in this?

It cannot be denied but that *Forteſcue*, as well as the reſt of the Judges of *Weſtminſter Hall*, muſt have been Aſſiſtants in the Houſe of Lords in the Parliament of 23 *Henry* VI, and attending on the Committee for the Bill; and therefore it will be idle to ſay that theſe Juſtices could be ignorant of the Debates and Reaſons of that Houſe, in the paſſing of Statutes concerning Sheriffs.

And then by conſequence they muſt know that it was the ſolemn Judgment of the King, Lords, and Commons, that that Statute was not to be ſuſpended and invaded by Pretence of any *Non Obſtantes* in that Particular to be void.

And where the Law is known and clear, though it were unequitable and inconvenient, yet the Judges muſt determine as the Law is, without regarding the Unequitableneſs or Inconvenience of it.

Ld. Vaughan's Reports, f. 37.

Secondly, For the ſecond Point the Opinions of the Juſtices, 2 *Henry* VII.

It is very true what Judge *Hutton* ſaid, That ſudden Opinions, when Judges hear no Arguments, are of no ſuch Force as to bind them to continue the ſame Opinion; but that when they ſhall have heard Arguments, and be better informed, they may alter and change, which

which hath uſually happened; let me add in common Caſes, but rarely, if ever, in any prerogative Point.

But let that be how it will, the Book plainly ſhews that the Juſtices Opinions, *viz.* that the Office of a Sheriff was ſuch a thing that might very well be granted 2 *Hen.* VII. for Term of Life or Inheritance, were ſudden Opinions, there having been no Arguments had in the Caſe.

And therefore were not to be looked upon to be of ſuch Force as our modern Lawyers have made it in their Speculations about Sovereign Power, there being nothing more evident than that ſuch an Opinion was directly contrary to ſeveral poſitive and expreſs Laws herein before produced, which ought to determine us in this Matter.

I deny not but that our Kings did anciently grant to ſeveral of their liege People, as to Earls, Barons, and likewiſe to *London* and *York*, Sheriffwicks of Inheritance.

Coke's 2d Inſt. fol. 588. And this appeareth by the Statute 28 *Edward* I, whereby that King granted *a ſon Peuple*, that they ſhould have the Election of their Sheriffs in every County, *ou Viſcount ne eſt my de fee*, *i. e.* where Sheriffwicks was not of Fee.

Here is no Exception of any Grants made by the King for Term of Life or Years, which induceth me to believe that before the making of this Statute, no ſuch Grants had been made by the Crown.

Raſt. Stat. 23 Hen. VI. cap. 8. *in the Preamble.* But indeed by a Parliament held 14 *Edward* III, "becauſe that "divers Sheriffs in divers Counties of *England* then being, had their "Offices, ſome for Term of Years of the King's Grant, and ſome "truſting of longer Continuance in their Offices by Procurement, *&c.* "were greatly encouraged, and did take upon them to do many and "divers Oppeſſions to the King's liege People unduly, and evilly and "falſely did ſerve the King and his People,"

Therefore it was ordained, "That no Sheriff ſhould abide or tarry "in his Office over a Year."

Here we may obſerve a Defect, for if that after the Words *by Procurement* had been left out, and a Particular of theſe Procurements had been given us, this Inſtance muſt have been much ſtronger to our Purpoſe than it is; but we are left in the Dark as to that.

Rot. Parliam. 50 Edw. III. N°. 14. However in the 50th of *Edward* III. the Commons prayed the King, "That he would from thenceforth grant the Office of Sheriff "to none for Term of Life, or Fee, but by Commiſſion from Year to "Year.

To which the King anſwered,

"Let the Statutes thereupon made be kept and held in all Parts."

Raſtal's Stat. 9 Hen. V. cap. 5. And in the Statute 9 *Henry* V. wherein that King is enabled to make Sheriffs at his Will for four Years, we read, "Except in the "Counties where certain Perſons were inheritable in ſuch manner of "Office."

Thus

Thus ſtood the eſtabliſhed Law of the Land touching Sheriffs, till the Statute of 23 *Henry* VI, which tells us,

" I. That in divers Counties of *England*, after the making of ſeveral " Statutes therein mentioned, many and ſeveral Sheriffs had been made, " and had occupied within the ſaid Counties, ſome ten Years, and " ſome twelve Years and more,

" 1. To the great Damage of the Kings that then were,

" 2. And their People,

" 3. And contrary to the ſaid Statutes, to their importable Damage " and open Diſheriſon, and upholding of Manſlaughter, Perjury, and " great Oppreſſions.

" II. Which being conſidered,

" It was ordained,

" By Authority of Parliament,

" That thoſe Statutes, and every of them, ſhould be duly obſerved in " every County of *England*.

III. Except in ſuch Caſes as are mentioned in the Statute, which I have given at large before.

And a little after the Statute tells us,

" 4. All Patents then made, or to be made, of any of the ſaid Of- " fices for Term of Life, or in Fee Simple, or in Fee Tail, to any of " the King's liege People, except before excepted, were declared to be " void and of no Value by the ſame Authority."

So that here is not only *clauſula prohibens*, *viz.* that the Office of a Sheriff ſhould not be granted in Time to come for Years, Life, in Fee Simple, or in Fee Tail; but alſo *clauſula caſſans*, that is, if any Patent ſhould be made to the contrary, they ſhould be void and of no Value.

For when the Legiſlative Power had added a *clauſula caſſans* in their Law, and therein plainly declared, that the King's Act done contrary to that Law ſhould be void and of no Value,

In ſuch Caſe, I conceive, the old Law ever was, that no Patent with a *Non Obſtante* drawn by Mr. Attorney, or Mr. Sollicitor General, and ſealed by the Chancellor, could legitimate any of the King's Acts done according to that Law, without overturning the Foundation of all Parliamentary Eſtabliſhments.

There can be no fairer Way of dealing with our Opponents than by confuting them from their own Confeſſion; give me leave therefore to put a Caſe.

" King *Henry* VIII, ſays Sir *Edward Coke*, though ſtanding as much " upon his Prerogative as any of his Progenitors, yet finding how vexa- " tious it was to himſelf, and how diſtaſteful to his ancient Nobility to " have new-raiſed Degrees to have Precedency of them, and finding that " this Kind of Controverſy for Precedency was of that Nature that it " had many Partakers, ſpent long Time, and hindered the arduous, ur- Coke's 4th Inſtit. f. 361.

Pulton's Stat. 31 Hen. VIII. cap. 10. *how Lords in Parliament ſhould be placed.*

"gent, and weighty Affairs of the Parliament, was content to bind and "limit his Prerogative by Act of Parliament, concerning the Precedency "of his great Officers, and of his Nobility; and amongſt other things "it was enacted,

Coke's 4th Inſt. fol. 372.

"By Authority of his Moſt High Court of Parliament, "That if any Perſon being Lord Chancellor, Lord Keeper, Lord Trea- "ſurer, Lord Preſident, Lord Privy Seal, or Chief Secretary, ſhould be "under the Degree of a Baron of Parliament, they ſhould ſit in the "uppermoſt Part of the Sacks in the midſt of the Parliament Cham- "ber.

"But in the *Star Chamber*, and all other Aſſemblies and Confe- "rences of Council, they ſhould ſit and be placed as it is rehearſed in "the Act, and in no other Place."

Well, ſince the Law is ſo, I will aſk this Queſtion, *viz.*

Why then might not the King, who is by his Prerogative the Fountain of Honour, diſpenſe with this Statute?

Sir *Edward Coke*'s Anſwer is,

He cannot.

And the Reaſon he gives for it is, "Becauſe the Words Negative "were added to avoid all Scruple, that the Order of Precedency ſet "down in that Parliament, ſhould not be altered by any *Non Ob-* "*ſtante*."

Now I cannot, I confeſs, well underſtand how theſe negative Words in the Act of 31 *Henry* VIII. *viz.* in no other Place, could not be altered by any *Non Obſtante*; and yet the affirmative Words in the Statute of 23 *Henry* VI. *viz.* that all Patents of the Offices of Sheriffs, which ſhould from thenceforth be made for Term of Years, Life, in Fee Simple, or Fee Tail, ſhould be void and of no Value, could be altered or ſuſpended by a *Non Obſtante*.

Since I take both theſe to be of equal Force, and that if one, then both Clauſes muſt be utterly inſignificant, and could never, when attacked, defend themſelves againſt the diſpenſing Power by *Non Obſtantes*.

It is eaſily granted that ſeveral Sheriffs had, before the making of the Statute 23 *Henry* VI, occupied that Office

Some for ten Years,

Some for twelve Years,

and ſome truſting of longer Continuance; which laſt Words, I conceive, do mean Sheriffs in Fee.

But yet all this was but *de facto* done, and not *de jure*, becauſe that Statute ſolemnly adjudged all Occupations to have been *contra bonum publicum*, and it is expreſſed,

Raſtal's Stat. 23 Hen. VI. cap. 8.

"1. To the great Damage of the King and People. And,

"2. Contrary to many ancient and former Statutes.

"And conſequently ſuch Grants were highly illegal."

Beſides

Beſides the Statute further declares, and we have no reaſon to doubt of the Evidence of it, that "by the Procurement of ſuch Offices there "had happened both to the King and People importable Damage, "open Diſinheriſon, upholding of Manſlaughter, Perjury, and Op-"preſſion."

But if the Office of a Sheriff was looked upon 2 *Henry* VII. to be ſuch a Thing as might well be granted for Term of Life or Inheritance, according to the ſudden Opinion of thoſe Judges; and if that muſt paſs for good Authority in Law, *Non Obſtante* the Statute 23 *Henry* VI. the Concluſion then well may be, that the ſame Judges might by a like ſudden Opinion have as well fruſtrated and annulled all the other Acts in the Statute Book, which had been made *pro bono publico*, contrary to the expreſs Intent thereof.

When as according to that ancient Principle of Law, which we have more than once cited before,

(For Truth looſeth nothing of its Force by being ſeveral Times repeated.)

The inferior Courts of *Weſtminſter Hall* were never other than Executors, not Executioners, *d'auncien Leyes & Cuſtomes du Royalme & Ordinances & Eſtabliſhments du Parlement.*

But it will be objected that in the Caſe of 2 *Henry* VII. there is mention made of an Act of Reſumption, and therein of a Proviſo for *H.* Earl of *N*'s Patent, whereby *Henry* IV. had granted the Office of Sheriffwick of the ſaid County for Life. OBJECTION.

And what can be ſaid to that?

I ſhall endeavour to ſolve this Objection thus: SOLUTION.

Firſt, That Act of Reſumption was made 10 *Henry* VII.

To which the King gave this Anſwer:

"As touching this Bill of Reſumption, the King's Highneſs hath "well conceived and underſtood the ſame.

"Hath therefore, by the Advice of his Lords Spiritual and Tem-"poral, and Commons, being in this preſent Parliament, and by Au-"thority of the ſame, it accepted and agreed.

"So always ſuch Proviſions and Exceptions, as by his Highneſs be "or ſhall be made and agreed during the Time of this preſent Parlia-"ment, put in Writing, to or upon the Premiſſes be good and effectual, "the ſaid Bill or Act, or any other the Premiſſes notwithſtanding, "for the Equity and rightwiſe Reward that the King intendeth to do "to every of his Subjects for his Merits, which ſhall be to the Plea-"ſure of God, and Honour of his Highneſs, and the Weal of all his "Land and People."

The Tenors of which Proviſions hereafter enſue.

Secunda pars Rotul. Parl. tent. apud Weſtm. 7 die Novem. ann. 1 Hen. VII. in quo continentur Actus Reſumptionis cum Proviſionibus & Exemptionibus in Capella Rotul. reman.

Secondly,

Secondly, Purſuant to his Anſwer the following Proviſo, among many others, was added.

" Provided always that this Act of Reſumption, or any other Act " made or to be made in this preſent Parliament, extend not, nor in any " Caſe be prejudicial or hurtful to the ſeveral Grants and Letters Patents " of King *Edward* IV. made to *Henry* Earl of *Northumberland*, of the " Office of Juſtice of all the King's Foreſts from *Trent North*, of the " Office of Conſtable, Steward, and Maſter Foreſter of the Caſtle, Lord- " ſhip, and Foreſt of *Knareſborough*, within the County of *York*;

" Of the Office of Conſtable and Porter of *Newcaſtle*, Sheriff of " the County of *Northumberland*, and Conſtable of the Caſtle of *Dun-* " *ſtaineburgh* and *Damburgh*, in the County of *Northumberland*;

" Nor alſo to our Grant and Letters Patents made under our Great " Seal, made to the ſaid Earl of the Office of Bailiff of *Tyndale* within " our ſaid Connty;

" But that as well our ſaid Grant, as the Grant of the ſaid King, and " all things in them contained, after and according to the Tenor of " the ſame, be unto him effectual and available; the ſaid Act or Acts " in any wiſe notwithſtanding."

So that we ſee that the Proviſo was added to the Act of Reſumption by Virtue of the Reſervation mentioned in the King's Anſwer.

And it is alſo plain it was never read, much leſs particularly allowed by either Houſe of Parliament.

And therefore it is a great Miſtake in thoſe who have raiſed an Argument from this Act and Proviſo, as if both Lords and Commons had clearly admitted that Patent to be legal and good.

But it is true, the Proviſo being made and agreed during the Time of that Parliament, and put in Writing by the King, bound him; ſuch being the Uſage of thoſe Times in Caſes of Acts of Reſumption, as may be ſeen in ſeveral Parliament Rolls.

All which being duly weighed, fully proves, as I conceive, that no good Argument can be fetched from the Proviſo added to the Act of Reſumption made 1 *Henry* VII.

And therefore,

Thirdly, As for the third Point what *Radcliffe* ſhewed, *viz.* the Statutes of 28 *Edward* III, *cap.* 7. and 42 *Edward* III, *cap.* 5, That no Sheriff ſhould continue in his Office above a Year, although he had a *Non Obſtante*, and yet notwithſtanding the King ſhould have his Prerogative:

In theſe two Things may be conſidered,

Firſt, Who this *Radcliffe* muſt be?

Secondly,

Secondly, What the Force of his Opinion was for the firſt,

It appears from the *Exchequer Rolls* 1 *Edward* IV,

That *Brian Roucliffe* was conſtituted *Tertius Baro de Scaccario quamdiu Regi placuerit, percipiendo in officio illo feodum conſuetum. In cujus rei teſtimonium, &c. teſte Rege octavo die Aprilis.*

Literæ Regis patentes Briano Roucliffe de officio tertii Baronis de Scaccario.

And in *Michaelmas Term*, 1 *Henry* VII, his Letters Patents are enrolled, whereby *Brianus Roucliffe* is conſtituted *Secundarius Baro de Scaccario quamdiu Regi placuerit.*

Inter Communia de Termino Paſchæ anno Regni Regis Edw. IV. poſt Conqueſtum 1°. Rot. 1°.

Ad habendum & percipiendum omnimoda vadia feoda, regarda & commoditates eidem officio debita ſive pertinentia ad Scaccarium noſtrum ſeu ad receptum Scaccarii noſtri vel heredum noſtrorum per manus Theſaurarii & Camerarii ejuſdem pro tempore exiſtentium ad terminos ibidem conſuetos.

Literæ Regis patentes factæ Briano Roucliffe de officio ſecundarii Baronis de Scaccario Domini Regis irrotulatæ.

Eo quod expreſſa mentio de vero valore annuo officii prædicti ac ceterorum præmiſſorum aut alicujus inde proveniunt, in præſentibus minime fact. exiſtit, aut aliquo ſtatuto, actu, ordinatione, conceſſione, reſtrictione, ſive proviſione in contrarium factis editis ſive ordinatis, Non Obſtante.

Inter Communia de Termino Sancti Michaelis 1 Hen. VII. Recorda Rotul. 1. in dorſo.

In cujus rei teſtimonium has Literas noſtras fieri fecimus patentes, teſte meipſo apud Weſtm. 24 die Septembr. anno Regni noſtri primo.

Quarum quidem literarum patentium prætextu prædictus Brianus Roucliffe 16 *die Octobris hoc termino admiſſus eſt, ad officium prædictum debite exequendum & præſtitit Sacramentum de ſe bene & fideliter habend. in eodem quamdiu, &c.*

Conſimiles literæ patentes factæ, viz. Edwardo Golderſburgh de officio tertii Baronis de Scaccario noſtro, &c. Ibid.

Johanni Holgrave de officio quarti Baronis de Scaccario noſtro, &c. Ibid.

Humfrido Starki de officio capitalis Baronis de Scaccario Domini Regis noſtri, &c. Ibid.

From all which it will follow, that *Brian Roucliff, alias Rowclyff*, quoted by the *Reporter* in the *Year Book*, 2 *Henry* VII, muſt be *una & eadem perſona & non alia, neque diverſa.*

And now we are to conſider what the Force of *Radcliff*'s Opinion was.

He ſhewed, ſays the Book of the Statute 28 *Edward* III, *cap.* 7, and 42 *Edward* III, *cap.* 5, for *cap.* 9. that no Sheriff ſhould continue in his Office above a Year, although he had a *Non Obſtante*, and yet notwithſtanding the King ſhould have his Prerogative, when as *Year Book*, 2 Hen. VII.

1. Neither of thoſe Statutes which I have already given the Reader at large, ſpeaks one Tittle of *Non Obſtantes.* Nor,

2. Is there a Word of the Statute of 23 *Henry* VI. to be found in the Report, though indeed it is enacted by that Statute, that a *Non Obſtante* put into any Patent againſt that Law, ſhould be void and of no Force.

So that here was at leaſt a great Miſtake in Baron *Radcliff* of one Statute for another, which, without doing him any Wrong, evidently ſhews,

1. That what he then ſaid, was ſaid in the ſudden.

2. That he wanted Time rightly to inform him of the Matter.

3. That the Reporter catched his Words from him.

4. And laſtly, That it was no other at the beſt than a random Opinion.

It would therefore certainly be a high Indignity to the Laws of *England* to ſuppoſe that ſuch a raſh, extrajudicial, and inconſiderate Opinion, ſhould create a Maxim in the Law for future Judges to ground their Reſolutions upon, and that too in ſo mighty a Point.

OBJECTION. But it will be objected that this Caſe of 2 *Henry* VII. hath been cited as adjudged in ſeveral Books of great Authority. As

1. By *Fitz Herbert* in his Abridgment of this Caſe, *tit. Grants* 33.

2. By *Brook*, *tit. Grants* 33.

3. By *Plowden*, in his *Commentaries*, *fol.* 502.

4. And laſtly, by Sir *Edward Coke*, in his 12th *Report*, *fol.* 18.

ANSWER. To which I anſwer,

Firſt, That the Abridgments of Two, no nor ten more to make up a Dozen, are ſufficient to make any Caſe Law, which was not ſo in the firſt reſolving of it.

Brook and *Fitz Herbert* indeed tell us what was ſaid in the Caſe, but their Abridgments can give no greater Force to make any Caſe more or leſs Law, than it had at that very Time when the Judges declared their Opinions; and to think otherwiſe would be a great Fallacy in Law.

Secondly, *Brook* differs from *Fitz Herbert*, for in *Fitz Herbert*'s Patents, *placito* 45, he ſaith nothing at all to the firſt Point, *viz.* the Validity of the Patent, but afterwards, *placito* 109, he ſaith, *Et fuit in Clauſe de Non Obſtante pur diſpencer ou les eſtatutes de annis* 28 *Edw.* III, *cap.* 7, of 42 *Edw.* III, *cap.* 9, *que voit que nulla ſerra Viſcount ultra un an*, and that a *Non Obſtante* might diſpenſe with thoſe prohibitory Statutes; but there is no mention made at all of the Statute 23 *Henry* VI, either in the Book at large, or in *Brooke*'s *Abridgment*.

Robert Brook Miles conſtitutus Capitalis Juſtic B. R. apud Weſtm. E. T. Pat. 1 & 2 Phil. & Mar. p. 2.

And we are further to obſerve that *Brooke* was an eminent Lawyer, and no leſs than Chief Juſtice of the *Common Pleas* in the Reign of Queen *Mary*, and could not eaſily be miſtaken what the Senſe of the *Year Book* of 2 *Henry* VII. was, conſidering the ſmall Diſtance of Time.

Thirdly,

Thirdly, If it ſhould be granted that *Plowden* cited both the *Year Book*, and *Fitz Herbert's Abridgment*, in the Caſe between *Grendon* and the Biſhop of *London*, which was in *Michaelmas Term*, in the 18th and 19th of *Elizabeth*, yet it may be ſaid that it was *arguendo* for his Client, and ſhall that be taken for good Law? Plowden Com. f. 502.

Nay if he had been retained on the other Side, who can tell but that he could have told the Court that That Caſe was never reſolved for Law by theſe Judges, or that it was only an extrajudicial Opinion?

And therefore no more than the *Prolata* or Suings of thoſe who gave it, unleſs every thing ſpoken at Pleaſure muſt paſs for a Reſolution of all the Judges in *England*.

Fourthly and laſtly, as to what Sir *Edward Coke* ſays in his 12th *Report*,

I think I have given it a full Anſwer already, and there remains now only that we here conſider

His third Principle, *viz.*

That the Book Caſe 2 *Henry* VII. was the Reſolution of all the Judges of *England*.

And to this I ſay

That the *Year Book* in the Cloſe of the Caſe tells us, that becauſe that was the firſt Time, and the Juſtices and Serjeants, and the King's Attorney agreed,

1. That they ſhould ſtudy well the Matter, and ſhould be heard.
2. That what they ſaid ſhould paſs for nothing.
3. And laſtly, That they would be at their Liberty to ſay and think what they pleaſed, notwithſtanding any thing they had then ſaid, *&c.*

How then, I pray you, can Sir *Edward's* Principles be true, that the Book Caſe 2 *Henry* VII. was reſolved by all the Judges of *England?*

But beſides all this it will further be objected, that here is another Caſe 21 *Henry* VII. which ought to be conſidered, and therefore that it may be better underſtood, I have rendered it into *Engliſh* thus. Objection.

There is a Diverſity between *malum prohibitum*, and *malum in ſe*, ſays the Book. *The Year Book*, Mich. Term. 11 Hen. VII. fol. 12.

Malum prohibitum is where a Statute inhibits that a Man ſhall not coin Money, and if he does that, he ſhall be hanged.

This is *Malum prohibitum*, for before the ſaid Statute it was a lawful Act to coin Money.

But now it is not, *&c.*

And with this Evil the King can diſpenſe, *&c.*

So if a Man ſhips Wool at another Place than at *Calis*, this is *malum prohibitum*, for it is prohibited by Statute.

And therefore the King may diſpenſe with this *malum*.

So the King may diſpenſe with a Prieſt to have two Benefices, and that a Raſ--- ſhall be a Prieſt, and this is *malum prohibitum*, and in like Caſes.

But *malum in ſe*, the King, nor no other, can diſpenſe with; as if the King would pardon one to kill another, or give him leave to erect a Nuſance in the High-way.

This is void, and yet when they are done, the King can pardon them.

So if a Man be bound in a Recognizance in Chancery to the King to keep the Peace at the Suit of another, the King cannot releaſe this Duty, becauſe of the Prejudice which may happen to another Perſon; and yet when it is forfeited he may releaſe it, and not before.

And ſo neither the King, nor any Biſhop, nor Prieſt, can give a Man Licence to commit *lechery*, *quia eſt malum in ſe*, by the Law of Nature.

But where it is committed they cannot aſſoil, *quod nota per Fineux Cheif Juſtice.*

This being the Caſe, I ſhall give theſe Reaſons to it.

Firſt, That this Diverſity between *malum prohibitum*, and *malum in ſe*, is no where, as appears to me, to be found in any of our Law Books till this very Caſe.

And therefore this ſeems to be an original Notion.

Secondly, It ſeems to be but the Opinion of one ſingle Judge, *viz. Fineux*, and that too *non judicialiter, ſed gratis dictum.*

Thirdly, This would make a King as omnipotent as Almighty God, who is *Rex Regum*, and *Dominus Dominantium*, for he himſelf cannot diſpenſe with that which is originally *malum in ſe* by the Law of Nature.

The Law of Nature is that which God at the Time of the Creation of the Nature of Man, infuſed into his Heart for his Preſervation and Direction; and this is Lex æterna, Coke, lib. 7. fol. 12. Calvin's *Caſe.*

For *Lex naturalis eſt vera & propria Lex divina, cujus Legiſlator eſt Deus, nec mutari poteſt per ſeipſum, nec in particulari, nec in univerſali.*

Fourthly, If the Kings of *England* might of Right, and by our Law, ſuſpend and diſpenſe with *malum prohibitum* in all Statutes, as according to the Latitude of this Caſe,

Then it had been in vain for Parliaments to have partaken with him in the Legiſlature.

Becauſe the Authority of Parliament would have been but a mere Name, a Shadow, a Phantaſm, a Chimera, and no more; for the King in his Judges would have been the abſolute Maſter, ſince he alone by them could without a Parliament, *viz. Jure depoſito*, have rendered

rendered uſeleſs all or any of thoſe Laws, which had been ſo ſolemnly eſtabliſhed by joint Conſent of all in Parliament.

And all theſe wonderful Operations were to be wrought by the expounding Power of the Judges in *Weſtminſter Hall.*

But that it was to act *extra ſphæram activitatis Judicium,*

I will prove from a ſolemn Recognition made by all the Judges of *England* in a Parliament held *anno* 31 *Henry* VI. *Thorp*'s Caſe.

Which was this.

Thomas Thorp being Speaker of the Houſe of Commons 31 *Hen.* VI, was in Time of Prorogation arreſted and impriſoned at the Suit of *Richard* Duke of *York*, upon a Judgment obtained in the *Exchequer.*

Rot. Parliam. 3 Hen. VI. No. 26. Declaratio facta ex parte ducis Eborum contra Declarationem Thomæ Thorp prolocutoris Domus Communis.

The Commons, at the re-aſſembling of that Parliament, wanting their Speaker, ſent up ſome of their Members to make Complaint thereof to the King and Lords, and to deſire their Speaker's Releaſe.

Upon this the Duke gives the Lords an Account of the whole Matter.

" Whereupon, ſaith the Parliament Roll, the Lords Spiritual and " Temporal, not intending to impeach or hurt the Liberties and Pri- " vileges of them that were common for the Commons of this Land " to this preſent Parliament, but equally after the Courſe of Law to " miniſter Juſtice, and to have Knowledge what the Law will ſay in " that Behalf :"

Opened and declared to the Juſtices the Premiſſes, and aſked of them whether the ſaid *Thomas* ſhould be delivered from Priſon by Force and Virtue of the Privileges in Parliament or no.

To the which Queſtion the Chief Juſtice in the Name of all the Juſtices, after ſad Communication and mature Deliberations had among them, anſwered and ſaid, That they ought not to anſwer to that Queſtion.

And then follows

The Judges Recognition.

1. For it hath not been uſed before Time that the Juſtices ſhould in any wiſe determine the Privilege of this High Court of Parliament.

2. For it is ſo high and mighty in its Nature,

3. That it may make Law.

4. And the Determination and Knowledge of that Privilege belongeth to the Lords of the Parliament, and not to the Juſtices.

Theſe ſeveral Cognitions ſo materially weighty in themſelves, being publiſhed and declared by all the Judges of *England*, and that before the Parliament as a fixed and ſtanding Rule of Law, and as a Memorial to all Poſterities enrolled among the Records of the ſaid High Court of Parliament for ever to endure;

Moſt of the prerogative Notions, which Lawyers have framed to themſelves, and upon which our late Judges ſo fatally grounded their Reſolutions touching the King's diſpenſing Power with general Acts of Parliament by Colour of an interpreting Power radically fixed to the Office and the Function of a Judge, who is only *dum Regi placuerit*, muſt of neceſſity fall to the Ground, and come to nothing.

I confeſs there is another Objection that I cannot paſs over without making ſome Reflections upon it;

It is a very late one indeed;

The Diſtinction is as pretty and ſurprizing as new.

OBJECTION.

In ſhort, it is that of Mr. Attorney General's Power in the Caſe of Sir *Edward Hales*.

I muſt, ſays he,

The Caſe of Sir Edw. Hales *lately printed*, fol. 8.

Diſtinguiſh between thoſe Acts of Parliament which concern Property, and thoſe which concern Government.

Acts of Parliament which concern Property, the King cannot diſpenſe with.

But thoſe which concern Government he may.

And this for the great Inconveniencies which may happen, or Urgencies of State which may force him to it; and thoſe unforeſeen at the Time of making the Law.

For it may happen by a Viciſſitude of Time, thoſe Laws that were made for the Preſervation of Government ſhould turn to the Deſtruction of it, if the King could not diſpenſe with them.

ANSWER.

To which I give this ſhort Anſwer:

Coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Regis Edw. filii Regis Edw. 17.

Firſt, The Statute 17 *Edward* II. proves that *les Choſes que ſerront a eſtabler pur l'eſtate*

1. *De noſtre Seigneur le Roy & de ſes heirs,*
2. *Et pur l'eſtate du Royalme & du Peuple,*

were to be treated of in Parliament.

1. By the King, and by the Aſſent
2. *Des Prelates, Countes & Barons,*
3. *Et la Communalte du Royalme.*

Forteſcue de laudibus Legum Angl. cap. 18. fol. 39. C.

Secondly, And as for Statutes in general, the Lord Chief Juſtice *Forteſcue* hath fully reſolved the main Point in Queſtion, as we ſhall hear preſently.

His Words are theſe:

Statuta tunc Anglorum bona ſint, necne, ſolum reſtat explorandum.

Non enim emanant illæ a Principis ſolum voluntate: Ut leges in Regnis quæ tantum Regaliter gubernantur, ubi quandoque Statuta ita Conſtituentis procurant Commodum ſingulare, quod in ejus ſubditorum ipſa redundant diſpendium & jacturam.

Quandoque etiam inadvertentiâ Principum hujuſmodi, & ſibi conſulentium inertiâ ipſa tam inconſulte eduntur, quod Corruptelarum nomina potius quam Legum illa merentur.

Sed non ſic Angliæ Statuta oriri poſſunt, dum ne dum Principis voluntate, ſed & potius Regni aſſenſu ipſa conduntur, quo populo læſura illa efficere nequeunt,

Vel non eorum commodum procurare.

Prudentiâ etiam & ſapientiâ neceſſario ipſa eſſe referta putandum eſt, dum non unius, aut centum ſolum conſultorum virorum prudentia, ſed pluſquam treſcentorum electorum hominum, quali numero olim Senatus Romanorum regebatur.

And then a little after,

Et ſi Statuta hæc tanta ſolemnitate & prudentia edita efficaciæ tantæ, quantæ conditorum cupiebat intentio, non eſſe contingunt;

What then follows?

And what is then to be done?

Why?

Quam cito reformari ipſa poſſunt:

But how?

Non ſine Communitatis & Procerum Regni illius aſſenſu, quali ipſa primitus emanarunt,

This is enough, and we need no Man to anſwer Mr. Attorney's Diſtinction between the King's Diſability of diſpenſing with Acts of Parliament which concern Property, and yet his Ability to diſpenſe with Acts of Parliament which concern Government.

Since no ſuch great Inconveniencies could poſſibly happen from any Acts of Parliament, that might by a Viciſſitude of Times be deſtructive of the Government, unleſs the King be cloathed with his mighty Power of diſpenſing.

Becauſe *Forteſcue* tells us that all ſuch Acts, *Quam cito reformari poſſunt*, which in plain *Engliſh* is, the King may, *ſemel in anno*, nay upon Urgencies of State within eleven Days call a Parliament, to repeal or reform any of thoſe unforeſeen Miſchiefs at the Time of the making of thoſe Acts, and ſo no need of ſuch *Non Obſtantes*.

We are told, and that truly, that Parliaments are not ſo frequently held as in former Times they were; but can Mr. Attorney make it out by any Diſtinction,

That that is a good Reaſon in Law to juſtify the Judges ſupplying the Want of Parliaments, and giving their own Reſolutions the Force, the Strength, and Energy of Acts of Parliament?

This would be to prove, that one Error or Inconveniency ought to be an Argument and Ground, nay a Warrant and Support for another, and a greater and more miſchievous.

And this would be a ready Way indeed to bring irreparable Miſeries and Calamities upon us by the Deſtruction of our Religion, Rights, Laws, Liberties, and Properties, and of the Peace of the Nation.

Or can Mr. Attorney ſhew the Laws for frequent Parliaments were ever yet abrogated by Parliament.

If they were not?

Where lyes the Fault, that thoſe Laws have not been better obſerved, and who ought to be prejudiced thereby?

Not the Subject ſure.

However that be, yet I conceive the Commiſſions of our modern Judges were not larger than thoſe of their Predeceſſors.

And if ſo, Preſcription, long Uſage, and Cuſtom, ought to have informed them what their Obligations were by the Duty of their Places.

From whence then ſhould they derive, or how ſhould they come to claim the Exerciſe of ſuch vaſt and boundleſs Powers and Juriſdictions, which are not any where to be read of amongſt the Acts of their as learned, though not ſo preſuming Predeceſſors.

OBJECTION.

But there is ſtill an Objection more behind, which is that ſome have alledged that Sir *Edward Coke*, in his 7th Report in *Calvin*'s Caſe,

Saith, That it was reſolved by all the Judges of *England* in the *Exchequer* in theſe Words:

Coke, lib. 7. fol. 14.

"Every Subject is bound by his natural Allegiance to ſerve and obey "his Sovereign, *&c.*

"It is enacted by the Parliament of 23 *Henry* VI, That no Man "ſhall ſerve the King as a Sheriff of any County above one Year. "And that notwithſtanding any Clauſe of *Non Obſtante* to the con- "trary, that is to ſay, notwithſtanding that the King ſhould expreſly "diſpenſe with the ſaid Act.

"Howbeit it is agreed, 2 *Henry* VII, that againſt the expreſs Pur- "view of that Act, the King may, by a ſpecial *Non Obſtante*, diſpenſe "with that Act.

"For that the Act could not bar the King of the Service of the Sub- "ject which the Law of Nature did give unto him."

Thus far the Objection.

ANSWER.

To which I give theſe Anſwers:

Firſt, That *Calvin*'s Caſe is but a late Caſe, adjudged in King *James* the Firſt's Time.

Secondly,

Secondly, That that Book doth not at all warrant that the Caſe of 2 *Henry* VII. was reſolved by all the Judges of *England* for good Law.

For 1. this Caſe is but *obiter* mentioned by my Lord *Coke*, and that too for the Proof of a Particular Point in *Calvin*'s Caſe about the Extent of natural Allegiance due to Princes.

2. And my Lord *Coke* (how faithful a Reporter ſoever he might be) ſays not one Word of its being reſolved by all the Judges of *England*, nor any thing like it.

Indeed he ſays it was agreed to in 2 *Henry* VII.

But by whom *non conſtat*.

And we have already, I hope, ſufficiently proved that there never was any Reſolution at all given in that Caſe, as appears by the Book.

Wherefore I appeal to all Mankind whether this Objection raiſed out of *Calvin*'s Caſe be not fully anſwered.

Thirdly and laſtly, That ſucceeding Ages may no longer be deceived by thoſe pernicious Opinions that have been made from 2 *Henry* VII, and no longer be drawn in to believe it as the Senſe of all the Judges in *England*.

I deſire them to look back and review the IVth *Section* of this *Chapter*, and in particular to conſider therein the ſolemn Reſolutions and Judgments:

1. Of the Parliament 28 *Henry* VIII.
2. Of the Parliament 8 }
3. Of the Parliament 12 } *Edward* IV.
4. Of the Parliament 17 }
5. And laſtly, Of the Parliament 6 *Henry* VIII.

Expreſly in Points concerning Sheriffs.

And then let them, and all others of the honourable Profeſſion of the Law, impartially determine whether the Arguments and Reaſons which I have given them upon the whole Matter, do not ſufficiently evince and prove the Propoſition which at firſt I laid down, *viz.*

That the Caſe in the *Year Book* 2 *Henry* VII, as repreſented and underſtood in later Times, could never be good in Law.

* CHAP. VII.

The Proceedings in the Parliament of the 10th *of* Richard II. *againſt* Michael de la Pole, *Earl of* Suffolk, *late Lord Chancellor of* England, *upon ſeveral Articles of grievous Offences, whereof the Commons impeached him.*

Rot. Parl. 10 Richard II. No. 6.

The Commons Charge againſt the ſaid Earl of Suffolk.

EN y ceſt Parlement touz les Communes dun Accord & unement Aſſemblez viendrent devant

1. Le Roy
2. Prelatz & Seigneurs,

en la Chambre de Parlement, compleignantz griefment de *Michael de la Pole*, Count de *Suff.* darrein Chanceller d'*Engleterre* lors eſteant preſent, & lui Accuſerent per Demonſtrance de Bouche en manere enſuant, ceſtaſſavoir.

ART. I.

Purchaſe Lands. PRIMEREMENT, Qe le dit Count eſteant Chanceller, & Jurrez de faire le Profit du Roi Purchacea de noſtre Seigneur le Roi, Terres, Tenemenz, & Rents à Grant Value come piert per Record & Rolls de la Chancellerie encontre ſon Serement la ou il ne lavoit tout deſerui conſiderez grant Neceſſite du Roy & du Roialme & outre ce a Cauſe que le dit Count feuſt Chanceller en temps dit purchace fait & les ditz Terres & Tenemenz feurent extenduz a meindre value quils ne vailent per an per grant ſome en deceit du Roy.

ART. II.

A Committee of Lords appointed by Parliament to examine the State of the King and Kingdom. ITEM, La ou 9 Seigneurs feurent aſſignez en darrein Parlement pur veer & examiner leſtat du Roy & du Roialme & dire lour avys coment il purra meuz eſtre amendez & mys en Melieur Governance & Diſpoſition & ſur ce lexaminment fait, & le report ſur ce fait au Roy ſibien par Bouche come en eſcript le dit nadgairs Chanceller diſoit

en

en plein Parlement que les ditz Adviſement & Ordenance deuſſent eſtre mys en due Execution, & ce ne feuſt fait en defaute de luy qalors feuſt Principal Officer.

ART. III.

ITEM, La ou la Charge feuſt grantez per les Communes au darrein Parlement pur eſtre deſpenduz en certein Forme demande per les Communes & Aſſentuz per le Roi & les Seignours & noun pas autrement les Deniers ent provenantz feurent deſpenduz en autre Manere Si qe la Meer neſtoit Gardez en manere come feuſt Ordeines per ou pluſours Miſchiefs ſont avenuz au Roialme & vray ſemblable eſt devenir, & ce en defaut du dit nadgairs Chanceller.

Money given by the laſt Parliament to be laid out in a certain Form for the Good of the Kingdom, and no otherwiſe. Yet miſapplied to other Uſes by the Fault of the Chancellor.

ART. IV.

ITEM, Per la ou un Tydeman de *Lymbergh* qavoit a lui & ſes heirs de don le Roy laiel 50 *l.* per an de la Cuſtomes de *Kingſton ſur Hull*, le qele Tydeman forefiſt devers le Roy & auxint le paiement des ditz 50 *l.* annuels feuſt diſcontinue per 20 ou 30 ans le dit nadgairs Chanceller le Sachant purchacea a lui & ces heirs du dit *Tydeman* les ditz 50 *l.* annuelz & fiſt tant que le Roi lui conferme la dite purchaſe, la ou le Roy deuſt avoir ove le profit.

Purchaſe.

ART. V.

ITEM, Per la ou le haut meſtre de Seint *Antoigne* eſt Schiſmatick & per celle cauſe le Roi deuſt avoir le profit qa lui appartenoit en le Roialme d'*Engleterre* le dit nadgairs Chanceller qi deuſt avoir avancez & procurez le profit du Roy priſt a ferme le dit profit du Roy pur 20 Martz par an & ent priſt a ſon oeps propre bien entour 1000 Martz & al heure que le Meſtre de Seint *Antoigne* en *Engleterre* qore eſt deuſt avoir poſſeſſion & livere du dit profit, il ne le poaſt avoir avant qil & deux perſones oveſque lui Savoient obligez per recognizance en la Chancellerie & per inſtrumentz en trois 1000 Livers de paier annuelment a dit nadgairs Chanceller & a *Johan* ſon fitz 100 *l.* per an a terme de lour deux vies.

Grievous Injuſtice and Oppreſſion.

ART. VI.

ITEM, Qen le temps du dit nadgairs Chanceller feurent grantez & faitz diverſes Chartres & Patentes des Murdrez Treſons Felonies, Raſures des Roules, Vente des Bois, & en eſpecial puis le commencement de ceſt Parlement feuſt faite & enſeale une Chartre de certeins Franchiſes grantez au Chaſtell de *Doverr* en deſheriſon de la Corone & ſubverſion des toutes les Places & Courts du Roy & de ſes Loies,

Divers Charters and Patents of Murders, &c.

To the Diſheriſon of the Crown, and Subverſion of the Laws.

ART.

ART. VII.

ITEM, per la ou Ordenance feuſt fait au derrein Parlement pur le Ville de Gant que dys 10000 Martz deuſſent eſtre cheuiz & par celle Chevance deuſſent eſtre perduz 3000 Martz la en defaut & negligence du dit nadgairs Chanceller la dite Ville feuſt perduz & nientmaynes les 10000 Martz paiez & les ditz 3000 Martz pur le Chevance perduz come deſuis eſt dit de toutz les queuz Articles les dites Comunes demandent juggement du Parlement.

The Earl's Defence to the Charge laid againſt him.

A quoi le dit Count fiſt ſes reſpons en manere qenſuit.

1. *Primerment* le dit Count diſoit as Seigneurs du Parlement coment il eſtoit Chanceller *Dengleterre* & pur le temps repreſenta le pêrſone du Roi en ſa abſence & demanda ſil deveroit reſpondre ſanz preſence du Roi depuis qil feuſt empeſche des faitz en temps qil eſtoit Chanceller.

2. *Secondment*, Le dit Count avoit ordeine par lavys de ſon Conſeil par Monſ. *Richard Leſcrop* ſon frere en loy averoit les paroles de ſe reſponſe des ditz empeſchementz a quele choſe les Seigneurs diſoient qe feuſt honeſt pur lui de reſpondre par ſa bouche de meſne & ſur ce il feſoit Proteſtation qil purroit adder ou diminuer a ſe reſponſe ceo qe a lui purroit eſtre honorable & profitable par avys de ſon Conſeil le quele choſe lui eſtoit grante.

Et quant al Primer Article de ſon empeſchement ceſtaſſavoir depuis qil eſtoit Chanceller qil deuſt purchacer certaines terres du Roi, &c. la dit Count reſpount que depuis qil feuſt Chanceller, il ne purchacea unqes nulles terres ne tenemenz du Roy ne le Roy lui dona, ne a nully de Soens nulles terres ne tenz tanque au temps que le Roy lui fiſt prendre leſtat du Count mes par voie de verroie eſchange Ceſtceſſavoir que come le dit Count avoit 400 Martz annuels ſur la Cuſtume de *Kingſton ſur Hull* par deſcent deheritage pur queuz il pluiſt au Roi daſſigner au dit Count terres & tentz a la value & aſſigna & dona partie devant qil feuſt Chanceller & partie depuis & ce au profit du Roi Sibien annuelment come par cauſe dune Sume de 1000 Martz paie au Roi par la dit Count pur celle cauſe & outre diſt que le Roi a ſon primer viage en Eſcoce il lui pleuſt de faire Dukes, Baneretz, & Chivaleirs al honour de lui & de ſon Roialme il pleuſt a Lui ſanz deſire ou covetiſe du dit Count de ſa propre motion de lui faire Count & lui comaunda de prendre leſtat & nom de Count de *Suff.* en lieu de cellui qe nadgairs moruſt & apres ceo noma la quantite de ceo qil averoit pur maintainer celle eſtate & outre ceo diſoit qil voilloet aſſigner meſme le quantite de les terres qe eſtoient au dit Count de *Suff.* que derrein moruſt & pur ce qe le dit Count diſoit au Roi que ma Dame le Roigne & la Dame de *Suff.* avoient toutz telles terres a terme de lour vies en lour meyns noſtre dit Seigneurs le Roi diſoit qil ordeigneroit aillours pur lui a la

la value tanque meſme les Terres lui feurent deſcenduz & quant a la deſert, &c. le dit Count reſpount qe a nomer ſa deſert ne giſt en ſa propre bouche honorablement a dire mes un choſe diſt il que queconque Perſone que ce ſoit que preſent aſcune charge ſur lui tantoft il ad deſerui ce qappertient a meſme la charge & outre diſt qil avoit eſte pris deux foitz de guerre, & un foitz en Alemayne quant il eſtoit meſſager pur la Marage du Roi & avoit a meſme le temps tant de damage & péril en ſon corps & perde de ſes biens qil navoroit pur a tantz des terres avoir tieux meſchiefs ſil ne quidoit meulx eſchaper qil ne tenoit a meſme le temps autres choſes il ne voet nomer meſmes mes ſi pleuſt au Roi aſcuns choſes recorder bien ſoit &c. mes le dit Monſ. *Richard Leſcrop* diſoit pur le dit Count que le dit Count avoit travaille a Baner per 30 ans & ſans deſhonar ou reſproeue, Loiez ent ſoit dieu & ad eſte Capitaine de Caleys & Admiral & envoie en diverſes foitz en Meſſage & tretees du Roy & auxint eſte Chanceller *Dangleterre* per grand temps & du Counſeil du Roy & ne feuſt mye treit de petit eſtat a ceſt honour du Count mes endoioez honorablement & ſufficeantment pur leſtat qeſt plus pres leſtat du Count les quelles choſes purront eſtre cauſes de deſert oveſque meſmes les cauſes que la dit Count ad nome devant pur luy mettre a tiel eſtat & honour & quant a les empeſchementz de les extents qe feurent faitz en deſceit du Roi, &c. le dit Count reſpount qil pria au Roi qil lui plerra aſſigner aſcuns en queux il ſaffioit de veer que le ditz extentes ſerroient reſonablement faitz & le Roi diſoit que ce ne ſerroit my honourable pur le dit Count de faire novelles extentes du temps qil eſtoit Chanceller qar ſerroit ſuſpecious qe a cauſe de celle office les extentz ſerroientz faitz plus favourablement, mes la voluntee du Roy feuſt que le dit Count prendroit les extents que feurent faitz devant le temps qil penſoit de lui faire Count ou que le dit Count qui doit davoir meſmes les terres & de ce nully purroit parler mal & pur ce le dit Count diſt que nulles extentes des ditz terres feurent faitz au temps qil eſtoit fait Chanceller mes qi ad pris a plus haut extents & que ſont plus profitables au Roi & outre ce le dit Count diſt que ſon dit eſtat du Count oveſque ce que le Roy lui dona pur meſme leſtat meyntenir feuſt conferme en plein Parlement & ſur ce feſoit ſon homage pur le dit eſtat chargez de bouche de Monſ. *Deſpaigne* & Duc de *Lancaſtre* & ſur ce le Roi lui dona les patentes ent faitz en ſes mayns propres en nom de poſſeſſion commandant le Clerc du Parlement de les mettre en la Rolle du Parlement & ſont enrollez.

Item, Quant al ſecond Article voir eſt que les 9 Seigneurs aſſignez firent report de lours avys au Roi & le dit Count par commandement de Roy diſoit que la volunte du Roi eſtoit que ſerroient mys en execucion quele choſe les Officers & autres du Conſeil le Roy & luy firent en partie come *Chirburgh* & *Breſt* Ceſtaſſavoir annuelment au profit

du Roy 5000 Martz & plus & il fiſt ſa diligence come il poaiſt que tout le dit avys deuſt avoir eſtre mys en execution tante come en luy feuſt & pur ce que les Articles & le execution des ditz pointz touchent les faitz dautres Officers & auxint en aſcun manere autres du Conſeil du Roy le dit Count reſpount qil eſt avyſe que autres Officers joyndrent a luy en ceſt reſponſe & en cas que eux ou nul autre lui vorra aſſignez defaute en eſpeciale il ſa excuſera ſi dieu pleſt.

Et meſme la manere il reſpount a la tierce Article & a la darreine.

Item, Quant al quart Article il diſt que le dit *Tydeman* avoit 50 *l.* annueles ſur lannciene cuſtome de *Kingſtone ſur Hull* a luy & ſes heyres enheritablement a toutz jours du grant le Roi E. Aiel le Roi qore eſt & feuſt paie de ycell long temps come piert par laccompt des cuſtumers de *Kingſtone ſur Hull* en Leſcheqer noſtre Seigneur le Roi quel Tydeman pur 1000 Martz queux il devoit au dit Count lui granta per ſon fait long temps paſſe en la temps le Roi E. aiel les 50 *l.* avanditz avoir & prendre au dit Count & ces heirs a toutz jours & par cauſe que le dit Count fiſt reſtitution del Patent du dit Tydeman & le Roi deſchargez de arrearages le Roi lui fiſt pardon de meſme le purchaſe ſanz ce que le dit Count lors conuſt & unqore fait aſcune forfeiture ou dette envers le Roi du dit Tydeman.

Item, Quant a la quint Article le dit Count devant qil feuſt Chanceller pria au Roi de doner a *Joan* ſon fitz Loſpital ou la procuracie de Seint *Antoigne* en *Engleterre* & le Roi luy granta franchement ſanz rien rendre ou autre condition & lui fiſt un Garrant au Prive Seal ſur qoi le Gardein du Prive Seal pur ce qil y avoit une egſliſe aproprie a meſme Loſpital ou procuracie ne verroit faire garrant du grant ſans une certeine ferme rendue au Roi & a cauſe de paiement de ycell il fiſt la garrant es ditz Count & *Joan* rendant vint Martz par an durrant la guerre a quele temps le dit Count ne ſavoit my la value del dit Hoſpitall ou procuracie & a plus toſt qil ſavoit il monſtra au Roi qil feuſt de la value de quatre centz Martz par an & le Roi diſoit qil lui plerroit bien qil laveroit tout ſoit il de greindre vallue & le dit Count diſoit au Roi que le dit Rent ne feuſt mye del poſſeſſion de Temporale ne Spirituele mes des coillet de pardon & qil ne voilent mye prendre le profit a ſon oeps mes emploier en *Almoigne* ſil pleuſt au Roy quele choſe il ad fait par aſſent du Roy, &c. Et ſi appiert overtement que le Roi ne feuſt deſceu depuis que la value lui feuſt clerement monſtrez & mys par aſſent du Roy en *Almoigne* ſanz profit temporel du dit Count & outre il fiſt proteſtation qil neſt pas tenuz de reſpondre a la partie per ceſte Empeſchement nientmoins pur declaration de ſon eſtate il diſt que a cauſe que la Benefice feuſt Spirituel il envoia al Pape pur avoir ent collation a ſon dit fitz quele le Pape lui ottroia per iſſint que ſon dit fitz feuſſe profeſſe en lordre deinz certein temps & pur ce que pur certain cauſes ſon dit fitz

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ne poeitz eſtre proſeſſe deinz le dit temps il remanda a la dite Court pur avoir ent Deſpenſation & ceſte choſe iſſint pendant en delay vient le meſtre qore eſt ove les bulles del Apoſtoil de meſme la choſe & per la iſſint & treita ove la dit ore Count qil ceſſeroit de feure plus avant vers la dite Court pur ſon dit fitz & iſſint de ſon bone gree par celle encheſon granta de rendre annuelment al dit Count & ſon dit fitz les Centz Livers contenuz en la dit Article.

Item, Quant al ſiſme Article en quelle eſt eſpecifie dune chartre grante a duar il diſt que garrant lui vient de la faire & pur ce que ce feuſt le Chaſtel & al profit le Roi ſanz male entent du dit Count elle paſſe le Seale legerement ſanz grand avys nient entendant lors que feuſt encontre les loies & ſi aſcun vorroit avoir declare ou enforme le dit Count que ce euſt eſte prejudiciall au Roi ou ſes lois il neuſt point eſte enſeale & tout feuſt elle enſeale il la volloit avoir repelle & dont nulle damage neſt unquore avenuz, &c. Et quant as autres Chartres eſpecifies en meſme Larticle il les fiſt par garrant ſanz male entention ou covyne de luy en null point & outre il prie que nulle noveltie ſoit mys ſur luy autrement que nad eſte avant ces heures ſur tieux officers entendants que ſi Chanceller face patente encontre reſon ou jugge rendre juggement encontre la loi que tiel patent ſerra repelle & tiel juggement reverſez ſanz autre puniſſement affaire a tiel officer ou jugge.

The Chancellor's Oath.

Et les Comunes repliantz al reſponſe du dit Count del primer Article monſtrerent as Seignours le copie de ſon ſerement fait quant il feuſt creez Chanceller en manere qenſuit [*Vous jurrez que bien & loialment ſervirez a noſtre Seigneur le Roy & a ſon People en Loffice de Chanceller & droit faire as toutes gentz pouveres & riches ſolont les lois & uſages du Roialme & loialment conſeillerez le Roi & ſon conſeil celerrez & que vouz ne Sacherez ne ſoeffrez le damage ne diſheriteſon le Roy ne que les droitures de la Corone ſoient deſtruz par null voie ſi avant come vous le poiez deſtourber, & ſi voeus ne poiez deſtourber vous le ferrez ſavoir clerement & expreſſement au Roi enſemblement ove voſtre loial avys & conſeil & que vous ferrez & purcharez le profit le Roi per tout ou vouz le purrez faire reſonablement ſi dieu vous aid & les ſeints Evangiels*] prient que ce lieu & bien entendu & conſiderez les circumſtancez de ſon dit reſponſe ſibien ceſtaſſavoir de ce qi nad pas le dit qil ne reſceut du don le Roi puis qil eſtoit fait Count eſteant en loffice du Chanceller diverſes terres & tenemenz qe come contenuz eſt en lempeſchement come qil ad coniz overtement qil reſceut du Roi autres terres & tentz que ſont certeins & ſeures a la value de quartre Centz Martz par an en eſchange de quatre Centz Martz annuels quels il avoit ſur la cuſtome de *Kingſtone ſur Hull* que ſont caſuels & nemye ſi ſeures nient enformant le Roi clerement de ſon damage de celle partie & coment qil ad dit qil reſceut partie des ditz terres & tenemenz iſſint

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pris en Eſchange devant qil eſtoit Chanceller les Comunes dient qil eſtoit lors du Prive Conſeil du Roy & a ce jurrez & puis en la Creation del Office du Chanceller aſtrict de novell par Serement & il en celle Office agreant as eſchanges per lui devant ſuppliez priſt & reſceuſt du Roi le remenant des ditz Terres & Tentz en plein per fourniſſement des eſchanges ſuiſditz & demandent Juggment du Parlement ſur tout ſon reſpons deſſuſdit.

Et al reſponſe del Second Article les Comunes repliantz diſoient qe depuis qil conuſt en ſa Primere Proteſtacion qil repreſenta leſtat du Roi tant come il eſtoit tiel Officer & iſſint leſtendy de ſon poair ſur toutz les autres per qoi coment qe defaut eſtoit en les autres il ne poaſt pour tant eſtre excuſez & per eſpeciale ce qe la Roi lui comanda a dire en Parlement come il ad dit il eſtoit le plus tenuz de mettre la choſe en Execution & deſicome il ne diſt Point qe les Damages ne ſont avenuz come ils ſurmettont ils prient Juggement de Parlement.

Et al Reſponſe del Quartre Article les Communes repliantz diſoient quil ſerra trove de Record en Leſchequer lavantdit Tydeman eſtre dettour au Roy en Grantz Somes come ils ſuppoſent & per celle cauſe appertient au Roy le dit Rent tout neuſt il autrement forfait & iſſint fuiſt le Roy deſceu & prient que les Recordes ſoient examinez & dient outre que un Neel *Hakeney* fuiſt occis per ſa Femme & ſa Servant & le dit Tydeman pur quele Felonye les ditz Femme & Servant furent Ars & le dit Tydeman ſenfuy.

Et al Reſponſe del Quint Article, les Communes replierent, purpoſantz Enſamplez dun *William de Thorp* nadgairs Chier Juſtice du Bank le Roy, qi mort eſt ſurmetantz quil priſt 20 *l.* dune Partie qavoit affaire en Plee devant luy & pourtant vendy la loy pur quelle Cauſe il eſtoit ajugge a la Mort & Forfaiture de ſes Terres & Chateux & diſoient qen ce que le dit Count eſteant iſſint Chanceller priſt le dit Centz Livrz du dit Proviſour devant qui fiſt la Livere al dit Proviſour hors des Mayns du Roi des ditz Profitz quele Livere il deuſt avoir fait ſelont le Comandement du Roy franchement ſanz riens prendre lour ſemble qil vendy la loy & prierent Juggement.

Et al Reſponſe del Siſme Article, les Communes repliantz diſoient quil appurtenoit a lui ſi Sage come il eſt deſtre bien Avyſe & bien Conſeile que naſſenteront ne ferroit tiele choſe que cheroit en Deſheriſon du Roy, & Oppreſſion de ſon People deſicome il poaiſt avoir en Sufficeantie de Conſeil de Juſtices & des autres a ſa Volunte, & prient Juggement de Parlement.

Et

Et ſur ce le dit Count repliant a le Replication des Comunes touchant ſon Serement diſoit qe prendre les ditz paroles du dit Serement generalement ſanz autre eſpeciale entendement null Chanceller enſealroit james nulles choſes de donn ou Grant du Roy a nulle Perſone des Terres & tenemenz ou autre biens ſanz Offenſe de ſon Serement mes qe le dit Count diſt qi neſt pas compris en la dit Serement ne defenduz a lui de prendre a luy meſmes de Dons du Roi nient plus que nul autre Perſone.

Et depuis qe les dons donez as autres Perſones en le dit Voyage des diverſes Eſtates ne as autres devant ne ſont empeſchez ne tenuz encontre le *Serement* du Chanceller il ſemble a luy qe ne plus il doit eſtre empechez pur dons donez a lui pur ſon Eſtat depuis que le dit Serement neſt defenduz ne Reſtreint a lui plus quas autres & plus eſpecialement pur ce que le dit Eſtat & les donz donez ſont confirmez per plein Parlement, et outre diſt qil accepta le Serement de Chanceller al entent qil le tendroit, Selont ſon ſceu, ſa Conſcience & Poair, & pur les Cauſes devant expreſſez il diſt qe devant dieu a reſpondre qil ne penſe rien avoir fait en les choſe ſuiſditz encontre ſon Serement et ſa Conſcience & nentend mye ſi le Chanceller enſeallent dons du Roy as Seignours pur lour Eſtat meyntener ou pur autre Cauſe reſonable per Garrant du Roi qe lui vient ſoit encontre ſon Serement *&c.* Et diſt qe ce qeſt compris en le Serement qil ne ſoeffrera Damage ne Diſheriſon du Roy *&c.* ce eſt a entendre a ce qil entende des Matiers dont le Roy nad Coniſſance & ce appiert per Clauſe compris en le Serement qil ferra Savoir au Roi Clerement & Expreſſement & apres qe le Roi eſt enforme en tiel Manere le Chanceller purra faire le Commandement du Roy ſanz Offence du dit Serement & diſt qe de ſon Eſtat & de ce qui le Roy luy dona fuſt expreſſement fait per le Commandement, Coniſſance, & Voluntee du Roi, & iſſint nient Encontre ſon Serement & nentend mye qe de celle matire ne doit eſtre empeſche.

Item, Quant a ce qui les Comunes diſoient qe le dit Count avoit Deceu le Roy a Cauſe qil avoit Pris de Roy le Manoir de *Faxfleet* en Value de 50 Livres quel Manoir vaut 200 Livres per An *&c.* le dit Count reſpount qe Monſ. *William de Morrers* luy diſoit qil avoit ewe les deux Parties du dit Manoir ove le Rent en *Northdalton* a Ferme per 7 An pur 50 Martz per An. & qil avoit perduz de celle ferme en le dit temps 100 Martz, & outre diſt qe le dit Manoir ove les dis Martz de Rent en *Dalton* tout enſemble ſont Eſtenduz come piert en la Chancellerie forſque a 41 Livres, 9 Soulds, 3 Deniers ob. & pour ce qe le dit Count avoit entenduz qi le Count de *Kent* avoit les ditz deux Parties du dit Manoir enſemblement ove les ditz Martz de Rent ſuiſditz en Value de 50 Martz ſi qe tout entiers le

Manoir feuſt de Value de 50 Livres il les ptiſt le Value de Meſme les 50 Livres, & outre diſt qe le dit Manoir ove les dis Martz ſuiſditz ne vallent pluis & a plein a tant & diſt qe qiconque Perſone qi voet ſuſtenir les Charges du dit Manoir ſufficialement & lui Paier pur les deux Parties 50 Martz per An & quant la tierce Partie ſoit eſchue de lui adonqes Paier pur la dit Manoir ove les 10 Marcz de Rent 50 Livres per An qil le ferra de bone coer.

Item, Quant a lempeſchement des Communes de 100 *l.* de la Penſion del Proviſour de Saint *Antoyn* & qe le dit Count daveroit vendre les Lois & miſteroit Enſample de Monſ. *William de Thorpe*, *&c.* Le dit Count reſpount qe les Caſes ne ſont rien ſemblables qar les Parties plederent devant le dit Monſ. *William* come devant lour jugge per les Lois *Dengleterre* en qele cas nul jugge ne doit prendre de nulle Partie de lour faire droit mes en le cas du dit Proviſour nulles Parties plederent devant le dit Count come Chanceller mes le dit Proviſour vient a luy ove Bulles de noſtre Seint *Piere* le Pape & nemye come a Chanceller na jugge en celle cas mes come Pier & Amy a *Johan.* ſon Fitz a quele heure homme ne ſavoit ſi le dit *Johan* avoit eſploit de ſa Grace du Pape ou nemye & auxint defautes feuront trovez par le Counceil du dit Count en les Bulles du dit Proviſour & par meſme la cauſe le dit Proviſour par ſes Amys de ſa bone gree profriſt une en Penſion de 100 *l.* pur Ceſſer ſa Suit en la Court de *Rome* pur ſon dit Fitz & pur ceo qi nenpecheroit ſes Bulles ſi qe les choſes ſuſdits ne feurent faitz come devant jugge mes par amyable Compoſition come poet eſtre prove par Inſtrument & par Teſmoignes en ceſte ville & iſſint ceſte Matire ne touche mye les Loies *Dengleterre* & touz jours le dit Count nentende mye qil ferra tenuz de Reſpondre a la Partie en ceſt Cauſe.

The Earl, at the Requeſt of the Commons, committed to the Conſtable of England.

Et ſur ce apres les Reſponſe du dit Count donez as Accuſementz des dites Comunes & les Replications a yceux faites dune Partie & dautre le dit Count a la Requeſte des dites Comunes pur la Grandeſſe des Defauts a lui iſſint Surmiſes eſtoit Areſtu par Comandement du Roi & comys en la Garde de Conſtable *Dengleterre*, & puis leſſe a Mainpriſe.

Et pur ce qe le dit Count nalleggea Point en ſa Reſponſe qil obſerve Leffect de ſon Serement en ce qil jurraſt *Quil ne ſaveroit ne ſoefferoit le Damage ne la Diſheriſon du Roy ne qe les Droitures de la Corone feuſſent deſtrutz par null Voie ſi avant come il les poiaſt deſtourber & ſil ne les poiaſt deſturber il le ferroit ſavoir Clerement & Expreſſement au Roy enſemblement ove ſon loial avys & Conſeils & qil ferroit & purchaceroit le Profit le Roy par tout ou il le purroit faire reſonablement*, & il tant come il eſtoit enſi Principal Officer du Roi ſachant Leſtat & Neceſſitee du Roi & du Roialme priſt du Roi tielz Terres &

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Teñz come eſt ſuppoſe par lempeſchement a luy en le dit Primer Article ſurmys & coment qil allegea en ſon Reſpons qe les dons a luy iſſint faitz feurent confermez per plein Parlement il y a nul tiel Record enrolle de Parlement per quoy agard eſt qe toutz les Manoirs Terres Teñtz Rentz Services Fees Advoeſons Reverſions & Profits ove lour Appurtenances par lui iſſint receuz de Roi ſoient reſeiſez & repriſez en les Mains du Roi avoir & tenir a noſtre dit Seigneur le Roi & ces Heirs ſi pleinement & enheritablement come il les avoit & tient devant le donn ent fait al dit Count & qe touz les Iſſues & Profits ent receivez ou levez al oeps du dit Count en le meſme Temps ſoient levez al oeps noſtre Seigneur le Roi des Terres & Chatels du dit Count illoeqes & aillours mes neſt pas lentention du Roi ne des Seignours qe celle Juggement ſeſtende de lui faire perdre le Nom & de Title de Count ne les 20 Livres annuels queux le Roi lui granta a prendre des Iſſues du Counte de *Suff.* pur le Nom & Title avantditz & outre pur ce qe le dit Count nad pas dedit qil neſtoit du Prive Conſeil du Roi, & a lui jurre quant il demanda primes du Roi la dit Eſchange eſtre fait & ad conuz qe devant les ditz Eſchanges perfourmez il feuſt fait Chanceller en quell Office il feuſt aſtrict par ſon Serement fait en la Forme avantdite.

All his Manors Lands, Tenements, &c. to be reſeized into the King's Hands.

But not to loſe the Name and Title of Earl, &c.

Et il eſteant iſſint el dit Office priſt du Roy Partie des ditz Quatre Centz Martz de Terre par reſon du dite Eſchange agreant al dite Covenant deſchange qil fiſt enſy devant qil feuſt Chanceller & nalleggea point en ſon dite Reſponſe qe le Roi feuſt Deſtinctment enforme de ſon Damage celle Partie ceſtaſſavoir en ce qe le Roi dona a lui Manoirs Terres & Rents qe ſont certeignes & ſeures & ne poent vraiſemblement eſtre deſtruitz ne adnullez pur les avantditz Quatre Cent Martz annuels qi ſont en noun certeins & levables & demandables des Cuſtumes & enſy come caſuels & en diverſes cas qe purroient aventurouſement eſchere agarde eſt qe touz les Terres & Teñz iſſint priſez per le dit Count pur les Eſchanges ſuſditz ſoient repriſez es meyns noſtre Seigneur le Roy a tenir a lui & ſes Heirs in manere come il les tient devant le donn ent fait en la dite Eſchange & qe les Iſſues & Profits Priſes & leues des Terres Teñtz & Profits ſuſditz puis le dite Eſchange remaignant al dit Count en Recompenſation des dites Quatre Centz Martz annuels queux il avoit enſi enheritablement de la Cuſtume devant les Eſchanges ſuſditz hors pris qe ſi les ditz Iſſues & Profits iſſint priſes puis les dites Eſchanges ſeſtendent a greindre value qe les dites Quatre Centz Martz annuels qadonques le Roi eit celle Surplus a lever des Terres & Chateux du dit Count illoeqes & aillours.

All the Exchanges the Earl made with the King, to be taken again into the King's Hands, &c.

Et quant al Article contenant qe le dit Count deuſt avoir purchaſe Cynkante Livres de Rent de Tydeman *Lymbergh* pur ce qe le dit Tydeman

man avoit les avantditz Cynkant Livres de Rent per An aprendre tantſeulement de la Cuſtume al Port de *Hull* & nemye allours la quelle Cuſtume appertient al Corone noſtre Seigneur le Roi dauntien Temps & le dit Tydeman eſtoit Alien come Bien eſt conuz & ſe tient hors du Roialme *Dengleterre* par trent ans & pluis & deſconuz eſt ſil ſoit en Vie ou non & neſt pas allegge qe aſcun de ſa Part le chalengea de long temps & le dit Tydeman ne poaſt en nul manere tranſlater le dit Rent en autre Perſone par Voie Dalienation ſanz le bone Volunte du Roi pur ceo qe leſtat qil avoit en le dit Rent feuſt a lui & ſes Heirs tantſeulment & non pas a ſes Aſſignes come par la Chartre du Roi qil ent avoit & qeſt de Record pleinement appiert & le dit Count ne monſtra pas qe le dit Rent feuſt purchaſe del dit Tydeman en *Engleterre* par quoy il ne poet eſtre conuz ſi la dite Purchaſe fuiſt bone & legale ou non et le dit Count nalleggea point en ſon Reſpons qil quant il purchaſe Pardon & Confirmation du Roy de purchaſe du dit Rent monſtra pleinement au Roi qil purroit avoir retenu le dit Rent a ſon propre oeps au meyns tanque le dit Tydeman ou les Heirs lineals nees deinz le Legeance & conuz euſſent demande la dite Rent per qoy y ſemble per les ditz Cauſes qe le Roy en le Grant des ditz Pardon & Confirmation qe demanderent per reſon grant fyn & eſtoient faitz ſanz fyn & ſi feuſt deceu.

Et auxint come le dit Count priſt apres de don le Roy lavantdit Manoir de *Faxfleet* & dis Martz de Rent qe feurent certeins & ſeures en Eſchange pur le ditz Cinkant Livres de Rent qi feurent caſuels pur ce qe le dit Port de *Hull* poet par Poſſibilitie eſtre adnulle par Flotz de Meer ou le Paſſage de Laynz illoeqes deſtourbe & anyenty & auxint pur diverſes autres Cauſes & enſy meſque le dit Count euſt eu bone & profitable Eſtate en le dit Rent il nalleggea Point en ſon reſpons qil fiſt Pleinement ſon devoir envers le Roy en la Price du Manoir & dis Martz de Rent ſuſditz en Eſchange en la fourme avantdite & enſy ſon dit Reſpons eſt meyns ſufficiant de lui excuſer del defaut a lui ent Surmis & pur ceo agarde eſt qe ſibien le dit Manoir de *Faxfleet* & les dis Martz de Rent ſuſditz ove les Appurtenances ſoient Repriſes en Mayn du Roy a tenir a lui & ſes Heirs come il les tient devant le don au dit Count ent iſſint fait come le Chartre de Pardon & Confirmation del Purchaſe des ditz Cynkantz Livres enſy faitz au dit Count ſoit repelle & autrement adnulle Et qe les avantditz Cinkantz Livres de Rent ſoient retenuez es Mayns du Roy & ſes Heirs en fourme come ce eſtoit avant la Purchaſe qe le dit Count ſi diſt a lui eſtre ent fait ſi aſcun y fuiſt & qe les Iſſues & Profits reſceuz ou euz al oeps du ditz Count ſibien du dit Manoir de *Faxfleet* & de les Dis Martz de Rent come les Iſſues & Profits des ditz Cynkant Livres de Rent ſil aſcuns priſt par reſon del Purchaſe avantdit ſoient levez

al oeps noſtre Seignour le Roy des Terres & Chateux du dit Count illoeques & aillours.

Item, Quant al Article conteignant le Profit de Seint *Antoign* pur ce qe le Meſtre del Maſon de Seint *Antoign* a qi le dit Profit provenant en *Engleterre* eſtoit due a ce qeſt dit eſt Siſmatick & auxint del Enmite du Roi & Poiar de *France* & pur tielle repute adonque & unqore eſt pur quoi tout le dit Profit duiſt appurtener au Roi ſicome de Siſmatick & Alien quel choſe ne deveroit de reſon avoir eſte Diſconu au dit Count avant qil demandaſt du Roy le dit Profit & il conuſt expreſſement qil le demanda a ſon Fitz come un Hoſpitall & nalleggea mye en ſon Reſpons qe le Roi quant il lui granta le dit Profit eſtoit enformez duement des choſes ſuiſditz & auxint en ce quant il fuiſt tiel Officer come devant eſt dit il envoia a la Court de *Rome* pur meſme le Profit avoir a ſon Fitz de la Collation du Pape come Benefice de Seint *Eſgliſe* & davoir enſi le dit Profit hors du Mayn du Roy par Collation del Apoſtoil & il ne dediſt Point qil ne reſceuſt des ditz Profitz Quatre Centz Martz per An nient alleggeant qil les rendiſt au Roi & come apres le dit Count conuſt qil fiſt une Bargayne ove le Proviſour qi clame la dit Profit du Grant du Pape davoir du dit Proviſour Cent Livres per An a lui & a *John* ſon Fitz a Terme de lour deux Vies pur deliuerr le dit Profit au dit Proviſour pur queux Cens Livers enſy a paier a lui & ſon ditz Fitz il priſt Suerte del Proviſour par Recognizance & Obligations des diverſes Somes nient contreſteant qe le Roi lui avoit commanda per ſa briefe de deliurer hors de ſes Mayns al dit Proviſour tout le Profit avantdit la ou y ſemble par riens qe unqore eſt monſtre qe tout le dit Profit deuſt avoir Demure en la Mayn du Roy pur les Cauſes avantdites au Meyns tanque il euſt eſte diſcuſſe ou le dit Profit feuſt Benefice de Seint *Eſgliſe* grantable par la Pape ou appurtenant au Roi par reſon de Sciſmacie & Enmyte du dit meſtre & il nalleggea mye en ſon Reſpons qe le Roi feuſt Clerement enformez des choſes ſuiſditz par qoi agarde eſt qe les avantditz Quatre Centz Martz per An du Temp qe le dit Profit lui eſtoit iſſint grante par le Roy tanque au Temps qil delivera meſme le Profit au dit Proviſour come auxint les ditz Centz Livres annuels receuz apres del dit Proviſour tanque en ceo ſoient Levez al oeps noſtre Seigneur le Roy de ces Terres & Chatelx & qe tout le Profit qe deuſt deſore appurtenir au dit Count par reſon du dit Reconiſance ou dautres Obligations ou Covenances enſy faitz en Suertie de la Paiement des ditz Centz Livers remaignent al oeps noſtre dit Seignour le Roy come Forfeitz & qe le dit Proviſour ſoit ent Outrement Deſcharge envers le dit Count & ſon Fitz & pur les Defautes & Meſpriſions ſuiſditz des queux le dit Count eſt enſy convict par non Sufficiancie de ſes ditz Reſpons agarde eſt qil ſoit Comys a Priſone du Roy a demurrer a volunte du Roi & qil ne ſoit delivre

He is for the Inſufficiency of his Anſwers committed to the King's Priſon during the King's Pleaſure.

delivre du dite Priſone avant qil eit fait Fyn & Ranceon a la Volunte du Roi & quant al 1000 Martz queux il ad allegge qil ad Paie au Roy pur les ditz Eſchanges agarde eſt qe les ditz 1000 Martz remeignent en les Mayns du Roi come en Partie du Paiement del Fyn & Ranceon qe le dit Count enſy ferra au Roy avant qil ſoit delivere du Priſone.

As for the Third Articles viz. of the Nine Lords, the keeping of the Sea and Ghant, *he was not to be impeached by himſelf without his Companions then of the King's Council.*

Et quant a les Troix Articles ceſtaſſavoir de les 9 Seignours la Gard du Mere & Gant y ſemble au Roi & as Seignours du Parlement qe le dit Count ne doit eſtre empeſche par ſoi ſanz ſes Compaignons qi feurent alors du Conſeil le Roi & ſi aſcun lui verra Empeſcher daſcun Defaut en eſpecial il ſoi offriſt preſta reſpondre.

Dover *Patent repealed, cancelled, and annulled.*

Et quant al Article contenent Chartres de Pardon & la Patent de Dovarr agarde eſt qe le Patent de Dovarr ſoit repellee cancellee & outrement adnullez. Et quant as autres Chartres & Patentz contenuz en lempeſchement avantdit ſi aſcuns ſoient faitz encontre la ley agarde eſt qe toutes Tielles Chartres & Patents ſi aſcunes tielles y ſoient, ſoient repellez & adnullez eſteantz les autres en lour Force & Vertue.

Here we ſee this Noble Lord was impeached,

Obſervations from the whole of theſe Proceedings.

I. For purchaſing the King's Lands, whilſt he was Chancellor; and appraiſing them at a leſs Value than they were worth; which was in Deceit of the King.

II. That an Act of the then laſt Parliament was not put in Execution through his Default, he being then Chief Miniſter of State.

III. That the Money ariſing by a Tax given to the King in the then laſt Parliament had not been expended for the Uſes for which it was given; and that in Default of the ſaid late Chancellor.

IV. For that whilſt he was Chancellor divers Pardons were granted for Murders and Treaſons, *&c.* and Charters were ſealed in Diſheriſon of the Crown, and Subverſion of the Laws.

To which he anſwered,

That ſince he had been Chancellor, he had purchaſed no Lands or Tenements of the King otherwiſe than by real and true Exchange, 'till ſuch Time as the King cauſed him to take upon him the Eſtate of an Earl; at which Time he aſſigned him ſome Eſtate in Land, to maintain his Degree. Then he ſpoke modeſtly of his Services and his

his Sufferings; and that the Lands were valued according to former Extents; and his Earldom, and the Lands aſſigned him, were confirmed in Parliament.

To the *Second* and *Third* Charge, he anſwered, That they related to and concerned other Officers as well as himſelf; and he conceived that therefore he ought not to be put to anſwer without their joining with him in making a Defence, unleſs himſelf were charged with ſome eſpecial and particular Offence therein.

To the *Fourth* he anſwered, That what he did, he did by Warrant, not conceiving that he acted contrary to Law therein; and deſired that no Novelty might be put upon him: But if he, as Chancellor, had iſſued a Patent, or if a Judge had given Judgment contrary to Law, the Patent might be repealed, or the Judgment reverſed, without other Puniſhment to be inflicted upon ſuch Officer or Judge.

The Commons, by way of Replication to this Defence, ſet forth the Chancellor's Oath:

"You ſhall ſwear well and lawfully to ſerve our Lord the King "and his People in the Office of Chancellor; and ſhall do Right to "all People Poor and Rich, according to the Laws and Uſages of the "Realm; and ſhall counſel the King according to Law, and his "Counſel ſhall conceal.

"You ſhall not be privy to, nor ſuffer the Damage nor Diſheriſon "of the King, nor that the Rights of his Crown be deſtroyed in any "Manner, ſo far forth as you can lett it; and if you cannot lett it, "you ſhall clearly and expreſsly acquaint the King with it, and give "your Advice and Counſel according to Law.

"And you ſhall procure the King's Profit, as far forth as you rea-"ſonably can. So help you God, *&c.*"

And that it appeared of his own ſhowing, That he had, contrary to this Oath, obtained of the King Lands to the yearly Value of four hundred Marks certain, in Exchange for four hundred Marks ariſing by the Cuſtoms of *Hull*, which is a caſual Profit, not informing the King of his Damage in that Behalf; and thereupon the Commons prayed Judgment againſt him.

To the *Second* and *Third* Articles they replied, That the Chancellor being in Office and Power ſuperior to the reſt, it was more in his Power than in theirs to ſee that the Laws were put in Execution: And for that he had not denied, but that Damage had ariſen thereby; they alſo demanded Judgment againſt him.

To

To the *Fourth* they replied and ſaid, That he ought to have been well adviſed, and taken Counſel to prevent his aſſenting to any thing that might be to the King's Diſheriſon, and in Oppreſſion of the People: For that he might have conſulted at his Pleaſure with the Judges and others: And then the Commons pray Judgment.

The Chancellor rejoined, As to the Matter of his Oath, that if it were to be underſtood literally, no Chancellor could ever ſet the Great Seal to any Grants made by the King of Lands, *&c.* to any other Perſons, without breaking the Oath: And that a Chancellor is no more tied up by his Oath from taking a Grant of Lands from the King to himſelf, than from making out Grants to others: That he took the ſaid Oath to keep it according to his own Judgment and Conſcience, which he had done: That that Part of his Oath which concerns the King's Damage and Diſheriſon is to be underſtood in Caſes where the King is not apprized of it; as appears by his ſwearing, to acquaint the King with it: But that the King being made acquainted with it, the Chancellor may well obey the King's Command without breaking his Oath; and that what he had done was with the King's Knowledge and Conſent.

And hereupon Judgment was given to this Effect, as followeth: *viz.*

Judgment againſt him. Foraſmuch as the ſaid Earl had not alledged in his Anſwer, That he had kept that Part of his Oath, wherein he ſwore not to be privy to, nor ſuffer the Damage nor Diſheriſon of the King; nor that the Rights of his Crown ſhould be deſtroyed, by any means ſo far forth as he could lett it; and if he could not lett it, that he would clearly and expreſsly acquaint the King with it, and give him his Advice and Counſel according to Law: And that he would procure the King's Profit ſo far forth as he reaſonably could:

And for that being Prime Miniſter of State, and conuſant of the State and Neceſſity of the King and Kingdom, he had notwithſtanding taken Lands and Tenements by Grants from the King, as was charged in the *firſt* Article:

And for that there was no Record of any ſuch Confirmation in Parliament, as he had alledged; it was adjudged, that all the Lands he had of the King's Grant, ſhould be re-ſeized into the King's Hands, and the King be anſwered the mean Profits ſince the Grants.

And for that the ſaid Earl had not ſet forth in his Anſwer, that he had diſtinctly informed the King of his Damage, in that the Lands which he the ſaid Earl had in Exchange for the Cuſtoms of

of *Hull*, were of the ſure and certain Value of four hundred Marks *per Annum*, and the Cuſtoms of a caſual Profit: It was likewiſe adjudged,

That the ſaid Lands, taken in Exchange for the ſaid Cuſtoms, ſhould be reſeized into the King's Hands.

As to the *Second* and *Third* Article, it ſeemed to the King and the Lords,

That the ſaid Earl ought not to be put to anſwer ſolely without others, that were of the King's Council, unleſs ſome eſpecial and particular Offence were laid to his Charge.

As to the *Fourth* Article, it was adjudged,

That ſuch Charters and Patents mentioned in the Impeachment as were contrary to Law, ſhould be repealed and annulled and all others to continue in Force.

CHAP. VIII.

A ſummary Account of the Impeachments of the Judges of Weſtminſter Hall, *and the King's Serjeant at Law, and others, in the Parliament* 11 Richard II. *for their extrajudicial Opinions in miſinterpreting the Law; and the Judgments of Treaſon thereupon given againſt them as Traitors to the King and Kingdom; together with the powerful Effects which thoſe Judgments had upon ſucceeding Judges for ſeveral Generations after.*

See the Parliament Rolls, 11 Rich. II. pars 1, 2, & 3.

Judgment of High Treaſon given in Parliament againſt eighteen ſeveral Perſons.

IN a Parliament held at *Weſtminſter* in the 11th Year of *Richard* II, Judgment of High Treaſon was given againſt eighteen ſeveral Perſons, and all, ſave one of them, of eminent Rank: Three Privy Counſellors; the Archbiſhop of *York*; the Duke of *Ireland*; the Earl of *Suffolk*; the Biſhop of *Exeter*, the King's Confeſſor; five Knights; ſix Judges, *viz.* Sir *Robert Treſilian*, Chief Juſtice of the *King's Bench*; Sir *Robert Bealknapp*, Chief Juſtice of the *Common-Pleas*; Sir *John Cary*, Chief Baron of the *Exchequer*; *John Holt*, *Robert Fulthorp*, and *William Burgh*, his Fellows; *John Locton*, the King's Serjeant at Law; *Blake*, of the King's Counſel at Law; and *Uſke*, the Under-Sheriff of *Middleſex*.

See Ruſhworth's Hiſtorical Collections, vol. 2. Appendix, p. 260.

Of thoſe eighteen, eight were executed; that is, *Treſilian*, five Knights, *Blake*, and *Uſke*.

Eight of thoſe executed.

But the Archbiſhop of *York*,
The Duke of *Ireland*,
And Earl of *Suffolk*,
ſaved their Heads by Flight.

Three ſaved themſelves by Flight.

The reſt had their Lives given them, but were baniſhed.

The reſt baniſhed, with ſmall Penſions whilſt they lived.

Their Lands and Goods were forfeited, and little Penſions allowed them during their Lives; ſo that they might be living Monuments of their own Reproach and Shame.

Beſides

Beſides it was made Felony for any one to procure their Pardons, and that they ſhould be dealt withal as Traytors, if they returned Home from their Baniſhment.

Parliament declared it Felony to procure their Pardons.

And they to be dealt with as Traytors upon returning.

And of eighteen Perſons all ſave three were impeached by the Commons.

The Offences which procured theſe exemplary Puniſhments, although their Proceedings be long, and comprehended almoſt all that was done in this Parliament,

I will briefly open to the Reader.

During the Minority of that King, by the evil Counſel of ſome near his Perſon there were great Miſcarriages in Government.

Theſe heinous Offences briefly laid open.

In the 10th Year of his Reign, and in the 20th Year of his Age, a Parliament was holden at *Weſtminſter*, and in that Parliament in Aid of good Government and of due Execution of the Laws, a Commiſſion was awarded to twelve ſeveral Peers and others of greateſt Wiſdom and Fidelity.

A Commiſſion was awarded by Parliament to twelve Peers, &c.

The Commiſſioners had Power in all Things concerning the Houſehold, Courts of Juſtice, and the Revenues,

In a Word, in all Things concerning the Good of the Realm, with full Power finally to determine and put in Execution for the Honour of the King, the better Governance of the Peace and Laws of the Realm, and Relief of the People.

The Extent of it.

This Commiſſion was to endure for one Year.

Continuance.

At the End of which the King would be of full Age.

The endeavouring to overthrow this Commiſſion iſſued by Authority of Parliament for the Welfare of the Realm, upon Pretence that it trenched upon the Royal Power, tended to the Diſheriſon of the King and Derogation of the Crown, together with the Deſtruction of the Commiſſioners who procured it, and put the ſame in Execution, upon Pretence that they and ſome others had in Parliament forced the Royal Aſſent.

The endeavouring to overthrow this Commiſſion, and thoſe that procured it, is the Caſe in brief.

As alſo,

The conſpiring to overthrow this Commiſſion and the Procurers of it is the Caſe in brief.

For though there be divers other Articles againſt many of them, yet this was the Ground-work of all, and this ſingly and alone is declared in all the Proceedings in that Parliament to be Treaſon.

Of theſe eighteen Perſons condemned five of them were Plotters, *viz.*

Five of the condemned were Plotters.

The Archbiſhop.

The Duke of *Ireland.*

Earl of *Suffolk.*

Treſilian, the Chief Juſtice, and

Sir *Nicolas Bramber.*

Theſe

The Inſinuations to the King about this Commiſſion.

Theſe inſinuated to the King, that this Commiſſion was in Diminution of his Kingly Power:

That the Procurers of it had extorted his Royal Aſſent, and that this was Treaſon.

Blake *declares it to be Treaſon.*

Thereupon *Blake*, one of the King's Counſel at Law, was adviſed withal, who declared his Opinion, that it was Treaſon.

He was commanded to prepare an Indictment of Treaſon againſt the Commiſſioners, and ſome of the Procurers of it, who had been active therein.

And draws up an Indictment againſt the Commiſſioners. The Effect of the Indictment.

The Indictment was drawn by him, which is entered in the Roll, and is to this Effect:

That they had traiterouſly conſpired amongſt themſelves in the Parliament to make this Commiſſion by Authority of Parliament againſt the Regality of the King, to his Diſheriſon and Derogation of the Crown.

That they compelled the King's Conſent, and that they confederated and bound themſelves to maintain one another in ſo doing.

The Indictment intended to be tried in Middleſex *or* London.

It was intended that they ſhould be tried upon this Indictment in *Middleſex* or in *London.*

The Under-Sheriff made acquainted with the Deſign.

Uſk, the Under-Sheriff of *Middleſex*, was acquainted with the Buſineſs, who was to prepare Things for the effecting of this Deſign, ſome of the Parties to be indicted not being Peers, which he performing accordingly, was therefore executed.

Some of the Judges Opinions to be aſked in order to the Trial.

The five Plotters, that the King might the more confide in their Counſels (for ſo are the Words of the Record) and that under the Colour of Law they might colour their Malice from the King and the Kingdom, before the Trial was to be had, adviſed the King to demand the Opinion of ſome of the Judges, that is, of the two Chief Juſtices and Chief Baron,

The Judges of the Common Pleas, ſix in Number, and of *Lockton* the King's Serjeant.

Blake *to draw up the Queſtions.*

Blake of the King's Council at Law, was commanded to draw up theſe Queſtions for the Judges Opinions, who did ſo accordingly.

The Judges ſent for to Nottingham *Caſtle.*

The Queſtions being thus drawn up into Writing, the Judges were ſent for to *Nottingham* Caſtle,

How they were required to anſwer.

Where, in the Preſence of the King, and ſeveral others, *per dictum Dominum Regem requiſiti in fide & legeantia, quibus eidem Regi firmiter ſunt aſtricti, quod ad certas quæſtiones inferius deſignatas & eis coram recitatas fideliter reſponderint,*

Et ſuper eis ſecundum diſcretionem ſuam legem dicerent.

The firſt Queſtion.

The firſt Queſtion was,

Raſt. Stat. 21 R. II. cap. 12.

Whether the new Statute and Ordinance and the Commiſſion made in the laſt Parliament were in Derogation of the King's Royal Prerogative.

Their Anſwer.

To which they all anſwered, that they were, becauſe they were made *contra voluntatem Regis.*

The

The ſecond was,

The ſecond Queſtion.

How they ought to be puniſhed which procured the ſaid Statute, Ordinance and Commiſſion?

Their Anſwer.

To which they unanimouſly anſwered, That they deſerved to be puniſhed by capital Pain (that is to ſay of Death) unleſs the King out of his Grace would in that Behalf pardon them.

There are eight Queſtions more, ſeveral of them concerning the Parliamentary Proceedings.

I ſhall only give the Reader

The fifth Queſtion;

The fifth Queſtion.

Which thus follows:

Item, Quærebatur ab eis, quomodo ſunt illi etiam puniendi, qui impediverunt Regem quo minus poterat exercere quæ ad Regalem & Prærogativam ſuam pertinuerunt.

Ad iſtam Quæſtionem unanimiter reſponderunt, quod ſunt ut proditores etiam puniendi, i. e.

Item, How they ought to be puniſhed that did interrupt (or hinder) the King; ſo that he might not exerciſe thoſe Things that pertained to his Regalty and Prerogative.

Whereunto with one Aſſent it was anſwered, That they ought to be puniſhed as Traytors.

Their unanimous Anſwer.

Theſe were the main Queſtions and Anſwers, and thoſe for which the Judges were condemned as Traytors to the King and Kingdom.

On theſe Anſwers the Judges were condemned as Traytors to the King and Kingdom.

And in order thereunto, as *Knyghton* tells us,

Knyghton de Eventibus Angl. Lib. 5. col. 2706. l. 11.

Primo die Parliamenti arreſtati ſunt omnes Juſticiarii; excepto Domino Willielmo Stypwith,

Scilicet,

Dominus Rogerus Fulthorp.

Dominus Robertus Bealknapp.

Dominus Johannes Carey.

Dominus Johannes Holt.

Dominus Willielmus Burgh.

Johannes de Lockton, ſerviens Regis ad Legem.

Iſti omnes capti ſunt ſedentes in officio ſuo judiciali, & ducti ſunt apud Turrim, & ſeparatim poſiti ſunt in cuſtodiam ſub hac cauſa.

But there is a Queſtion and an Anſwer more, which I cannot pretermit, and that is the eighth, which runs in theſe Words:

The eighth Queſtion.

Item, It was required, ſince that the King, whenſoever him pleaſed, might remove his Officers,

Raſt. Stat. 21 R. II. c. 12.

Whether the Lords and Commons might without the King's Will impeach the ſame Officers and Juſtices, upon their Offences, in the Parliament, or not?

To which Queſtion it was by one Mind anſwered, That they might not, and that he that doth the contrary is to be puniſhed as a Traitor.

Their unanimous Anſwer.

Remark upon the preceding Matter.

This was a very high and daring Presumption in the Judges to think that they ought to obtrude their extrajudicial Opinions upon the whole Parliament for Law, and that too in their own Case; they vainly thought, perhaps, that under the Notion of the Resolution of all the Judges of *England*, they might shelter themselves in Times of Storms and Tempest; but it was not long after ere their Illusion was discovered, and they were made to know by woeful Experience, that their Office was *Jus dicere*, to say what the Law said, and not *Jus dare*, to give Law as they pleased. And such Law which directly struck at the Frame and excellent fundamental Policy of the State, the Authority and Jurisdiction of the great Court of the Kingdom.

The Office of a Judge.

But in the next Place we are to enquire what the Reasons were which those Legicides gave to justify their Opinions to be according to Law.

And this will best appear, by giving their Defence which they made to the Impeachment of the Commons.

A Copy of the Question read to them.

The Commons having gotten a Copy of the Question,

The Prayer of the Commons that they might be adjudged Traytors, and for what Reasons.

And those being read to *Bealknapp*, *Fulthorp*, *Holt*, *Burgh*, Sir *John Cary*, Chief Baron of the *Exchequer*, it was prayed on Behalf of the Commons, that forasmuch as the said late Justices, Baron of *Exchequer* and King's Serjeant were commanded to answer in the King's Presence what the Law was, and answered contrary to Law, by Colour whereof they designed to destroy all the Lords and other the King's Lieges, who had been aiding and counselling in the making the said Commission and Statute, and by such their Resolutions became aiding and abetting to the traiterous Purposes of the Appellees, and had concealed the same without declaring them to the Lords appointed by the said Commission, for the good Governance of the Kingdom,

Upon these Reasons the Commons prayed that the said Legicides might be adjudged Traytors.

The Commons demand if the said Questions were so asked and answered to by them.

Whereupon it was demanded of them, Whether or no the said Questions were proposed to them, and answered by them, as aforesaid?

To which they said, That they would not deny but that the said Questions were proposed to them:

But that their Answers were taken otherwise than according to their Intention.

This was their general Answer.

Now for a more particular one.

Sir Rob. Bealknapp's *particular Answer for himself.*

First, Sir *Robert Bealknapp* alledged, that about the Feast of *Epiphany* next after the last Parliament he came to *Windsor* by the King's Commandment, and there the Archbishop of *York* charged him to have been the Contriver of the said Commission and Statute in Derogation of the King's Regalty, and that there was no Man which the King hated more than himself, and that if he could not invent some Way to

defeat

defeat and annul the ſame, and to reſtore the King to his Royalty, *(il ſerroit occiis comme faux Traitour)* that he ſhould be killed like a falſe Traitor as he was. To which, as he ſaid, he anſwered, That the Lords and others that were aiding in making the ſaid Commiſſion and Statutes, intended thereby the Welfare, Honour and good Governance of the State, of the King, and of all his Kingdom, and that he left *Windſor* at that Time in great Diſgrace, and Danger of his Life.

That afterwards by the King's Command he came to *Woodſtock*, where he was again charged and threatned, and anſwered as before, and departed in like Fear of his Life.

And ſaid further in his Defence to the Impeachment, that the Anſwers which he made to the ſaid Queſtions were not made *de ſa frank volunte mes encontre ſon gree*, for that he was threatned by the ſaid Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, that if he did not anſwer agreeably to the King's Pleaſure he ſhould be killed.

So that the Anſwers which he made were made by reaſon of the great Fear that he was put into by theſe evil Perſons.

Beſides all which he ſaid he was ſworn and commanded in the King's Preſence upon Pain of Death to keep the Matter ſecret, as being of the King's Council.

And ſo in Concluſion prayed, that for the Love of God he might have a gracious and merciful Judgment. *His Prayer for a merciful Judgment.*

Secondly, As for the Anſwer of Sir *John Holt*, it was to the ſame Purpoſe with *Bealknapp*'s, *viz.* That he ſubſcribed out of Fear of Death, and makes the like Prayer for a gracious and merciful Judgment. *Sir* John Holt's *particular Anſwer for himſelf. With the like Prayer.*

Thirdly, Sir *William Burgh* and Sir *John Cary* anſwered ſeverally and ſaid, That they had heard how Sir *Robert Bealknapp* and Sir *John Holt* had been evilly intreated for the Cauſe aforenamed, and urged that the ſaid Sir *William Burgh* and Sir *John Cary* had likewiſe been threatned by the ſaid Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, that if they did not make Anſwer agreeable to the King's Pleaſure, they ſhould be killed too. *Sir* William Burgh *and Sir* John Cary's *ſeveral Anſwers.*

And that they were told that the ſaid Sir *Robert Bealknapp* and Sir *John Holt* had made Anſwer as aforeſaid, and at laſt confeſſed that they themſelves had ſet their Seals thereto through Fear. Which being ſaid, they likewiſe prayed for a gracious and merciful Judgment. *Their Prayer for a merciful Judgment.*

Fourthly, Sir *Roger Fulthorp* alledged, That he was menaced by the ſaid Archbiſhop of *York*, Duke of *Ireland*, Earl of *Suffolk*, and Sir *Robert Treſilian*, that if he did not anſwer according to the King's Will he ſhould be killed or deſtroyed. *Sir* Roger Fulthorp's *Anſwer for himſelf.*

Fifthly,

Sir John Lockton's *Anſwer for himſelf.*

Fifthly, Sir *John Lockton* ſaid, That he was menaced in like manner by the ſaid Archbiſhop of *York*, the Earl of *Suffolk*, and Sir *Robert Treſilian*, that if he did not make Anſwer according to the King's Mind, he ſhould be alſo killed or deſtroyed; adding withal, that himſelf was but the King's Serjeant, and of ſmall Power to reſiſt their Malice.

And alſo, that the ſaid Earl of *Suffolk* told them the ſaid Sir *Roger Fulthorp* and Sir *John Lockton*, that the others aforeſaid, then Juſtices, had made Anſwer as aforeſaid.

For which Cauſe, and for the great Fear that they were put into by the ſaid Menaces, they ſaid that they aſſented to the Anſwers made to the ſaid Queſtions, and ſet their Seals thereto.

Sir Roger Fulthorp's *Diſcovery of this to the Earl of* Kent.

And that ſhortly after, to wit, on the Morrow, the ſaid Sir *Roger Fulthorp* diſcovered the Matter aforeſaid to the Earl of *Kent* at *Nottingham*, and told him that what he had done was againſt his Will, and deſired him that in Time to come, if there were Occaſion, he would bear witneſs of the ſame.

Sir Roger Fulthorp's *and Sir* John Lockton's *Prayer for the like Judgment.*

For which Cauſes the ſaid Sir *Roger Fulthorp* and Sir *John Lockton* prayed for the Love of God that they might have a gracious and merciful Judgment.

The Commons Reply to all.

To all which the Commons replied, and ſaid,

That thoſe were accounted Men learned in the Law, &c.

Firſt, That the ſaid late Juſtices and Baron of the *Exchequer*, and the King's Serjeant, were accounted and taken to be learned Men in the Law, and that the King's Will was, that they ſhould anſwer him according to Law, and no otherwiſe.

Notwithſtanding which they had anſwered falſely and contrary to Law, and thereby encouraged the Archbiſhop of *York*, Duke of *Ireland*, &c. Traytors, *&c.* to have murdered and deſtroyed by falſe Colour of Law, the Lords and others that had been aiding and aſſenting in the making of the ſaid Commiſſion and Statutes.

The Words of the Roll are theſe: *Que les avanditz nadgaires Juſtices, Baron de Leſchequer & Serjeant du Roi feurent apris & tenuz pur Sages de Ley:*

Et que la volunte du Roy neſtoit autre mes quils deuſſent avoir reſpondu as queſtions ſuſditz come la Ley verroit & nemye en autre manere, as queux queſtions ils reſponderent fauxement encontre la Ley donantz hardiment, & bandours as ditz faux Traitours adjuggez come devant eſt dit, d'avoir murdre & deſtruit per faux colour de Ley, les Seigneurs & loialx Lieges queſtoient eidantz & aſſentantz a la feſance des ditz Commiſſions & Eſtatutz faitz, al d'arrein Parlement pur la bone governance de Leſtate le Roy noſtre Seigneur & ſon Royalm.

But

But

Secondly, The Commons farther replied and ſaid, That they, &c. had concealed the falſe Purpoſes and Compaſſements of the ſaid Traitors, without diſcovering the ſame to any of the Lords of the ſaid Commiſſion; ſo that a Courſe might have been taken to prevent the Effect of the ſaid falſe Purpoſes and Compaſſements.

And yet had concealed theſe Matters from the Lords, &c.

Which Concealment ought not to have been of ſo high a Treaſon that concerned the State of the King and his Kingdom, for an Oath taken, or any other Cauſe.

For theſe Reaſons the Commons prayed, That the ſaid late Juſtices, Baron of the *Exchequer*, and the King's Serjeant, might be convicted and attainted of Treaſon, *come Traitours au Roy & ſon Roialm.*

The Commons pray that theſe may be convict, &c. as Traitors both to the King and Kingdom.

Whereupon the Lords Temporal took Time to adviſe what Judgment they ſhould give, which might be for the Honour of God, and the Honour and Benefit of the King, and of all his Kingdom.

The Lords take Time to adviſe what Judgment to give.

Sixthly, Then the Commons prayed, That *John Blake* and *Thomas Uſke*, both in Cuſtody, might be brought into Parliament to anſwer their Impeachment;

The Commons impeach John Blake *and* Thomas Uſke.

Which being done on the third Day of *March*, the Commons impeached him.

Firſt, For that the ſaid *Blake* had been retained by the ſaid Archbiſhop of *York*, Duke of *Ireland*, *&c.* to be of the King's Council, and thereby had connuſance of the Treaſon and evil Purpoſes of the Appellees, and had alſo ſworn to give his Advice therein, and to counſel them; and for that he had framed the Queſtions that were propoſed to the ſaid late Juſtices and Barons of the *Exchequer* at *Shrewſbury*, and to the ſaid Juſtices and King's Serjeants at *Nottingham*, to the End that they might anſwer to the ſame as aforeſaid.

That Blake, *as King's Counſel, had Connuſance of the Treaſon.*

And had framed the Queſtions, &c.

Secondly, And inaſmuch as he had imagined and compaſſed with the ſaid Appellees, to procure the Lords, and other the King's Lieges, who had been aiding in making of the ſaid Commiſſion and Statute, to be indicted in *London* and *Middleſex* of Treaſon for that Cauſe. *Et que ils deuſſent avoir eſte arreſtus & murdres fauxment traiterouſement, & malveiſement.*

And had procured the Lords and others to be indicted of Treaſon, &c.

Thirdly, and laſtly, For that the ſaid *Blake* was knowing, aiding, and counſelling, of, and in, the Treaſons aforeſaid.

And was aiding and counſelling of theſe Treaſons.

But as for *Uſke*,

The Commons charged him, That he knew of the ſaid Treaſons, and procured himſelf to be made Under-Sheriff of *Middleſex*, to the Intent that he might the better be enabled to cauſe the ſaid Lords, and

Uſke *knowing, &c. procured to be made Under-Sheriff of* Middleſex.

ther the King's Lieges, to be indicted and arreſted as aforeſaid, and, was adhering, counſelling, and aiding to the ſaid Archbiſhop of *York*, Duke of *Ireland*, *&c.* in their Treaſons.

And being both arraigned. Upon all which Articles *Blake* and *Uſke* being arraigned,

Blake's *Plea.* I. *Blake* pleaded that he was retained of Counſel for the King by the King's Command, that he was ſworn to conceal and keep his Counſel, and that what he did, he did by the King's Command, whom he ought to obey.

Uſke's *Plea.* II. *Uſke* alſo pleaded, that what he did he did by the like Command,

Et les dit John Blake & Thomas Uſke autre choſe ne alleageront pur leur excuſation en celle partie.

The Lords adjourn till the next Day. Hereupon the Temporal Lords took time to adviſe till the next Day.

And then Blake *and* Uſke *were brought into full Parliament, and being found guilty,* At which Time *Blake* and *Uſke* were brought in *plein parlement*, and the Lords finding by Proof and their own Confeſſion, that they were guilty of the Crimes whereof they were accuſed by the Commons:

And foraſmuch as they had alledged in their Excuſe the King's Command, their Fault was ſo much the more heinous, becauſe they well knew that the ſaid Archbiſhop of *York*, Duke of *Ireland*, *&c.* had incroached to themſelves a Royal Power over the King, and that theſe Commands were made *a leur Ordinance.*

The Temporal Lords award with the King's Aſſent. Wherefore it was awarded by the ſaid Lords Temporal, with the King's Aſſent,

Blake *to be a Traytor, and open Enemy to the King and Kingdom, and to be drawn and hanged,* &c. *Firſt*, That *John Blake* as a Traytor, and an open Enemy of the King and Kingdom, ſhould be drawn and hanged, and his Heirs diſinherited, and his Lands and Goods forfeited.

Uſke *to be drawn, hanged, and beheaded,* &c. *Secondly*, That *Uſke* ſhould be drawn, hanged, and beheaded, and his Head ſet upon *Newgate*, his Heirs to be diſinherited, and his Lands and Goods to be forfeited to the King.

Bealknapp *and the five others brought into full Parliament.* After which Judgments ſo given, *Bealknapp*, *Fulthorp*, *Holt*, *Burgh*, *Cary*, and *Lockton* were brought into Parliament, and the Lords Temporal were of Opinion,

The Temporal Lords Opinion of them. I. That foraſmuch as *Bealknapp*, *Fulthorp*, *Holt*, *Burgh*, and *Lockton* were preſent at the making of the ſaid Commiſſion and Statute:

II. And

II. And becauſe they and the ſaid *Cary* well knew that the Commiſſion and Statute were made to the Honour of God, and for the good Government of the State of the King and Kingdom:

III. And foraſmuch as the King's Will never was that they ſhould have anſwered to the ſaid Queſtions otherwiſe than according to Law, and they knowing the Law, had anſwered otherwiſe contrary to Law, giving Colour thereby to the ſaid Appellees to accompliſh their falſe Treaſons and Compaſſements, in murdering and deſtroying the ſaid Lords and loyal Leiges that had been aiding, counſelling, and aſſenting to the making of the ſaid Commiſſion and Statute:

IV. And inaſmuch as the ſaid Sir *Robert Bealknapp*, and other the Legicides, had Connuſance of the ſaid falſe Purpoſes and Compaſſements of ſo high a Treaſon, and would not diſcover the ſame to any of the Lords that were in the ſaid Commiſſion, whereby Remedy might have been taken for the Safety of the King and Kingdom,

That this was Treaſon,

That they were guilty of Treaſon.

Pour ſe agard feuſt per les ditz Seigniors Temporels per aſſent du Roy.

I. That the ſaid Sir *Robert Bealknapp* ſhould be drawn and hanged, *comme Traitour en cel point*, and that he and his Heirs ſhould be diſinherited for ever.

Judgment on Sir Robert Bealknapp.

II. That the ſaid Sir *Roger Fulthorpe* ſhould be *treyn & pendue* as a *Traitour en cel point*; *& quil & ces heires feuſſent diſheritez, a touz jours.*

On Sir Roger Fulthorpe.

III. That Sir *John Holt* ſhould be drawn and hanged as a Traitor in that Point, and that he and his Heirs ſhould be diſinherited for ever.

On Sir John Holt.

IV. That Sir *William Burgh* ſhould be drawn and hanged as a Traitor in that Point, and that he and his Heirs ſhould be diſinherited for ever.

On Sir William Burgh.

V. That *John Cary* ſhould be drawn and hanged as a Traitor in that Point, and that he and his Heirs ſhould be diſinherited for ever.

On Sir John Cary.

VI. And that Sir *John Lockton* ſhould be drawn and hanged as a Traitor in that Point, and that he and his Heirs ſhould be diſinherited for ever.

On John Lockton.

And

And it was further adjudged, that all their Lands, Tenements, Goods and Chattels, ſhould be forfeited to the King.

Robert Treſilian was appealed of falſe Treaſons againſt both King and Kingdom, as a Traytor and Enemy of the King and Kingdom.

VII. But as for *Robert Treſilian, faulx Juſtice*, he was appealed by the Lords Appellants *de haux Treſons, faitz encontre le Roy & ſon Roialme, come Traitour & Enemy du Roy & de Roialme*, and amongſt ſeveral other Articles of High Treaſon and Offences wherewith he was charged,

Theſe that follow were Part:

For not ſuffering les grandes de Roialme, &c. *to ſpeak, or come near to the King to give him Counſel, nor let the King ſpeak to them.*

First, That the ſaid *Robert Treſilian, faulx Juſtice*, and other the Appellees by their falſe Covine, would not ſuffer *les grandes de Roialme*, nor other the King's good Counſellors to ſpeak nor approach to the King to give him good Counſel, nor would permit the King to ſpeak to them, but in the Preſence and Hearing of the ſaid Appellees, by the Aſſent and Counſel of the ſaid *Robert Treſilian, faulx Juſtice*, and of *Nicholas Brembre, faulx Chiviler de Londres*, or in the Preſence of ſome of them at leaſt, at their own Pleaſure, and as them beſt pleaſed, thereby preventing *les grands*, and the King's good Counſellors from expreſſing their Good-will to their Sovereign, and encroaching to themſelves Royal Power, Seigniory, and Soveraignty over the Perſon of the King, to the great Diſhonour and Peril of the King, and of his Crown and Kingdom,

And encroaching Royal Power.

Treſilian, &c. *miſleading and evil counſelling the King.*

Secondly, That the ſaid *Robert Treſilian, faulx Juſtice*, together with the reſt of the Appellees, by their falſe Covin, and Encroachment of their falſe Malice, miſled and evil counſelled the King.

For that whereas the King was bound in Duty to anſwer *les Grands Seigneurs & ſon Peuple ſes Lieges*, of ſuch Graces and Rights as they ſhould require of him, he made no Anſwer, but according to the Will and Pleaſure of the ſaid *Robert Treſilian, faulx Juſtice*, and other the Appellees, *en ouſtant le Roy, de ſon devoir, contre ſon ſerement*, and in withdrawing the Affections of the Grands and the People from their Sovereign; encompaſſing likewiſe to eſſoyn the King's Heart from the Peers of the Land, that they might engroſs the Government of the Kingdom to themſelves only.

Thereby alienating the Affections of the Lords and People from the King, and the King's Heart from them.

He and others procuring Grants and Mannors, &c. from the King, for which they got great Bribes, &c.

And made them of their Faction in Defiance of the King and his Kingdom.

Thirdly, That by the ſaid Encroachment the other Appellees, by Aſſent and Counſel of the ſaid *Robert Treſilian, faulx Juſtice*, and *Nicholas Brembre, faulx Chivaler*, had procured Grants from the King of divers Mannors, Lands, Tenements, Rents, Offices, and Bayliwicks, to ſeveral of their Kindred, and divers others of whom they took great Bribes, as well for procuring the ſaid Grants, as alſo upon promiſe that they would become of their Faction, *en defeaſance du Roy & de*

de ſon Royalme, except only of *Robert Manſel*, Clerk, *John Blake*, *Thomas Uſke*, and ſome others.

Fourthly, That the ſaid *Robert Treſilian*, *faulx Juſtice*, and other the Appellees, encroaching to themſelves Royal Power as falſe Traitors to the King and Kingdom, had procured and counſelled the King to grant Pardons of horrible Treaſons and Felonies, as well againſt the Eſtate of the King as of the Party, which thing was againſt Law, and the King's Oath.

He and others procured of the King Pardons of horrible Treaſons and Felonies.

Both againſt Law and the King's Oath.

Fifthly, That whereas the Lords and Commons of the Realm, after they had underſtood that the King's Will, through the evil Mitigation and Counſel of the ſaid *Robert Treſilian*, and others the Appellees, was ſuch that he would not ſuffer any thing to be begun, proſecuted, or done againſt the ſaid Malefactors, would not proceed farther againſt them, contrary to the King's Will; and afterwards in the ſaid Parliament, after Conſultation and Advice with all the Lords, Juſtices, and other Sages and Commons of the ſaid Parliament, how the State of the King, of his Regalty, and of his Kingdom, might beſt be preſerved from the Perils and Miſchiefs aforeſaid, they could not find out any other Remedy than to ordain that twelve *des loyalls & ſages Seigneurs de la terre*, ſhould be of the King's Council for one whole Year then next enſuing.

The Lords and Commons perceiving, through his and others Counſel, that the King would not ſuffer any thing to be done againſt the ſaid Malefactors,

They would no further proceed againſt them to the King's Diſpleaſure.

But awarded in Parliament a Commiſſion of twelve Peers, &c. to be of the King's Council for one Year.

And that ſuch a Statute and Commiſſion ſhould be made to them, whereby they might have full and ſufficient Power to make Ordinances for the Government of the King and Kingdom;

And for whatſoever appertained to the King on this Side and beyond the Sea, and to repeal, repair, and redreſs whatever had been done amiſs againſt the Eſtate, Honour, and Profit of the King and Kingdom, and to do divers other things neceſſary for the Good of the King and Kingdom.

And that no Perſon ſhould preſume to adviſe the King, or to move him in any ſort againſt the ſaid Ordinance and Statute.

And that none ſhould preſume to adviſe the King againſt that Ordinance and Statute.

And if any did that,

For the firſt Offence he ſhould forfeit his Goods and Chattels, and for the ſecond, ſhould undergo the Puniſhment of Life and Member.

What the Puniſhment for ſuch firſt Offence.

What for the ſecond.

And that that Ordinance and Remedy ſhould be provided if the King ſhould pleaſe, and not otherwiſe.

To which Ordinance all the Juſtices of the Kingdom agreed and gave their Advice upon it, both in the Preſence of the King, and of the Lords. And alſo the King fully aſſented thereunto.

To that Ordinance all the Juſtices agreed and adviſed upon it.

* And the ſaid Ordinance, Statute, and Commiſſion were made according to the Aſſent of the King, the Lords, the Juſtices, and other the Sages and Commons aſſembled in Parliament, for the Safety of the King, his Regalty, and the Realm.

And yet Treſilian *and others at the End of the Parliament told the King that the Ordinances were againſt his Regalty, and that thoſe that procured the making thereof deſerved Death as Traitors to the King.*

And after the End of that Parliament the ſaid Traitors and Malefactors by their ſaid evil Encroachments, falſely and traiterouſly inform the King, that the ſaid Ordinance, Statute, and Commiſſion, were made in Defeazance of his Regalty, and that all they that procured or counſelled the making of the ſaid Ordinance, Statute, and Commiſſion, and all thoſe who perſuaded the King to aſſent to it, were worthy of Death as Traitors to the King.

Treſilian, &c. *cauſed the King to make a Progreſs throughout his Kingdom, and moſt Part of* Wales, *and to call the chief Men of the Cities and Boroughs,* &c. *And bound them ſome by Bonds and others by Oaths, to ſtand with the King againſt all Men, to accompliſh his Purpoſes.*

Sixthly, That to accompliſh the ſaid High Treaſon the aforeſaid Malefactors and Traitor *Alexander* Archbiſhop of *York*, *&c.* with the Aſſent, and by the Counſel of the ſaid *Robert Treſilian*, cauſed the King to go with ſome of themſelves throughout his Kingdom, and the greater Part of *Wales*, and to call before him the Lords, Knights, Eſquires, and other ſufficient Perſons of thoſe Parts, as well of the Cities and Boroughs as of other Places; and bound them, ſome by their Bonds, and ſome by their Oaths to the King, to ſtand with him againſt all Men, and to accompliſh the King's Purpoſes.

Which Purpoſe of the King was at that time to fulfill the Wills and Purpoſes of the ſaid Malefactors and Traitors.

Which Securities and Oaths were contrary to the good Laws and Uſages of the Land, and againſt the King's Oath, to the great Diſſervice and Diſhonour of the King and the Realm.

Triſilian, &c. *cauſed the King to betake himſelf to the remoteſt Parts of the Kingdom, to defeat the End of the Commiſſion,* &c.

Seventhly, That to enforce the ſaid traiterous Purpoſes, the ſaid *Robert Treſilian*, and other the Appellees, often cauſed the King to betake himſelf to the moſt remote Parts of the Realm, to the End that the Lords aſſigned by the ſaid Ordinance, Statute, and Commiſſion, might not conſult with him about the Affairs of the Realm, in Diſturbance of, and to defeat the Purport and Effect the Ordinance, Statute, and Commiſſion aforeſaid, to the great Diſſervice of the King and the Realm.

He, &c. *cauſed the King to retain great Numbers of new People, and give them divers Badges never uſed anciently.*

Eighthly, That the ſaid *Robert Treſilian*, and other the Appellees, cauſed the King to retain great Numbers of new People, and to give them divers Badges, otherwiſe than any the King's Progenitors had uſed to do of ancient Times.

* *The Aſſent of the Juſtices is here mentioned to aggravate their Crime; but the Statute was made, as appears by the Title,*

1. *By the King,*
2. *Of the Aſſent of the Lords and Commons aſſembled in Parliament.*

Raſt. Stat. 10 Rich. II. *in the title of the Statute.*

To

To the End that they might the better be enabled to perform their falſe Treaſons aforeſaid.

Ninthly, That the ſaid *Robert Treſilian*, and the other Appellees, for the more thorough Accompliſhment of their Treaſons aforeſaid, and to make the King confide and truſt in them, and in their Counſel, and to take them for the loyaleſt and wiſeſt of all his Kingdom *; and thereby the better to colour their Treaſons and Falſities aforeſaid, cauſed the King to call before him at different Places, divers Juſtices and Men of Law, to wit, *Robert Treſilian*, *Robert Bealknapp*, *John Cary*, *John Holt*, *Roger Fulthorp*, and *William Burgh*, his Juſtices, and *John Lockton*, Serjeant at Law, and *John Blake*, Referendary, and others, who being oppoſed and aſked in the King's Preſence by the ſaid Malefactors, whether the ſaid Ordinances, Statute, and Commiſſion, were made in Derogation of his Regalty and Prerogative or not, with divers other Queſtions.

And for the further Accompliſhment of their Treaſons, the ſaid Appellees cauſed the King to call his Judges before him to aſk them the before-recited Queſtions.

To which the ſaid Juſtices, Serjeant, and *John Blake*, anſwered in the Affirmative, as it hath before been ſhewn.

Tenthly, Whereupon it was reſolved by the ſaid Malefactor to arreſt, and by falſe Inqueſts to indict and attaint ſeveral of the Lords and Commons, who had been concerned in making of the ſaid Commiſſion and Statute.

Thereby to arreſt, indict, and attaint ſeveral of the Lords and Commons concerned in the making the ſaid Commiſſion.

Eleventhly, † That the ſaid *Robert Treſilian*, *faulx Juſtice*, and other the Appellees, Traitors to the King and Kingdom, had cauſed the King to direct his Counſel to make certain Perſons that were named to him by the ſaid Malefactors and Traitors to be Sheriffs throughout *England*, to the Intent that they might procure ſuch Knights of Shires to come to Parliament as they liked of, *en defeaſance des bones Seigneurs & leaux & bones Communes de Royalme*, and of the good Laws and Cuſtoms of the Land.

Treſilian, &c. *cauſed the King to direct his Council to make ſuch Men Sheriffs thro'* England, *as they had named to him, to get ſuch Knights of Shires to Parliament as they approved of.*

Treſilian being ſolemnly called in Parliament to appear and anſwer to the ſaid Articles of Appeal, and others, made default, which being recorded the Lords Appellants prayed that he might be adjudged and convicted *de les hautes Treſons* contained in their Appeal.

Treſilian *called in Parliament to anſwer to theſe Articles made default; whereupon the Lords Appellants pray he may be convicted of the High Treaſons he was charged with.*

* Et un faire le Roy croyer en eux & en leur Conſeil, & les tenir pluis loialx a luy & plus Sages que nullex autres de ſon Roialme & de ſons ceo, plus colerer lour faux treiſons & fauxetees.

† Ad caſtellum de Nottingh. Rex advocari fecit cunctos Regni Vicecom. ut ipſi nullum miletem de pago vel ſchira permitterent elegi, niſi quem Rex & ejus conſilium elegiſſet. Ad quod reſponſum eſt per Vicecom. De Militibus eligendis dixerunt Communes velle teneri conſuetudines uſitatas, quæ volunt, quod a comunibus milites eligantur. *Walſingham. Hiſt. Angl. in Vita* Rich. II. *p.* 329.

Whereupon,

‡ Whereupon, after mature Deliberation, the Lords of Parliament, by the King's Aſſent, adjudged the ſaid *Treſilian* guilty and convict of the Treaſons contained in ſeveral of the ſaid Articles.

And awarded,

The Judgment awarded againſt him as a Traitor to the King and Kingdom.

Firſt, That he ſhould be drawn and hanged as a Traitor and Enemy to the King and Kingdom.

Secondly, That He and his Heirs ſhould be diſinherited for ever, And

Thirdly, That his Lands, Tenements, Goods, and Chattels, ſhould be forfeited to the King.

Then he was brought into Parliament to be heard what he had to ſay why Execution ſhould not be accordingly.

After which the ſaid *Treſilian* was taken and brought into Parliament, and there was aſked if he had any thing to ſay or alledge, ſince the ſaid Judgment was given againſt him, why Execution of the ſaid Judgment ſhould not be done.

Execution pronounced.

And foraſmuch as he could not ſay nor alledge any thing in ſtay of the ſaid Execution, it was commanded that he ſhould be carried to the *Tower*, and from thence to be drawn through the City of *London* to *Tyburn*, and there to be hanged by the Neck.

The Marſhal of England *to ſee it done.*

And that the Marſhal of *England* ſhould ſee Execution done, taking to him the Aſſiſtance and Force of the Mayor, Sheriffs, and Aldermen of *London*.

Which was done that Day accordingly.

Which was accordingly done the ſame Day.

Rode, caper, vitem, tamen hinc, cum ſtabis ad aras,
In tua quod fundi cornua poſſit, erit.

Theſe Judgments were almoſt the whole Work of this Parliament.

Theſe Judgments were not huddled up in haſte; but they were given upon long and mature Deliberation, being almoſt the whole Work of that Parliament.

And it is declared in the Roll, that the Lords ſpent a long Time, and took great Pains to examine the Evidences, the better to ſatisfy their own Conſciences and the World.

Theſe Judgments were ten Years after made void in Parliament.

Raſt. Stat. 21 Rich. II. cap. 12.

But that Parliament was held by Force.

It is true that the Judgments which were given in this Parliament were after revoked, and made void in the Parliament 21 *Richard* II, but it is as true that that Parliament was held by Force, as it is declared in the Parliament 1 *Henry* IV, that it was held *Viris armatis & Sagittariis immenſis.*

‡ *The King is here made a Party to the Judgment, the Reaſon thereof (as I conceive) was that the Temporal Lords thought he could, by giving his Aſſent thereto, be the ſtronger obliged to maintain thoſe Judgments afterwards; and that this muſt be ſo, conſult the* Juriſdiction of the Houſe of Peers aſſerted, *written by the late Lord* Hollis, *wherein there are ſeveral Precedents both before and after this Parliament, which declare the Lords only to be Judges in Parliament.*

But

But to take away all Objections, the Statute 1 *Henry* IV. doth wholly reverſe, revoke, repeal, and annul for ever the Statute of 11 *Rich.* II. and all the Circumſtances and Dependants thereupon.

Raſt. Stat. 1 Hen. IV. cap. 3. *and this Statute doth for ever repeal and annul the Statute that did revoke thoſe Judgments.*

It being further accorded, aſſented, and eſtabliſhed in the ſaid Parliament 1 *Henry* IV, that the Parliament 11 *Richard* II. ſhould be firmly holden and kept after the Purport and Effect of the ſame, as a Thing made for the great Honour and common Profit of the Realm.

So that theſe Judgments of Attainders againſt the Judges have the Authority of two Acts of Parliament, and both of them (for any thing that I can find) ſtand unrepealed to this Day.

Theſe Judgments of Attainders have the Authority of two Acts of Parliament.

I am afraid I have tired the Reader with ſo long a Relation of the Proceedings in the Parliament 11 *Richard* II.

But I have two Reaſons to offer in my Excuſe.

Two Reaſons given for relating theſe proceedings in Parliament at length.

The one is,

That I never met with theſe particular Impeachments, Anſwers, Replies, and Judgments in Print, and therefore thought it fit they ſhould be better known.

The other is to ſhew,

That by the bold and daring Anſwers of the Judges, they not only attempted to ſubvert the very Rights and Beings of Parliaments, but to deprive the King of his legal Power in Parliament, and to place it in their ſingle Votes out of Parliament.

Before this extrajudicial Opinion, the Judges durſt never queſtion the Proceedings of Parliament.

For before this extrajudicial Reſolution, I confeſs I could never find in all my Reading, that the Judges of *Weſtminſter Hall* durſt preſume to queſtion the Proceedings of Parliament.

And therefore this Caſe was an Original, it being againſt Nature, and the Order of thoſe Ages, that any Members of inferior Courts ſhould introduce ſuch a high-flying pernicious Practice as to undertake to judge of a ſuperior Court, eſpecially the Court of Parliament, which was then a Court of the higheſt Juriſdiction, and could not be cenſured by any other Law or Sentence but its own.

But to draw to a Concluſion:

Obſervations from the whole.

Firſt, Is it not plain, that thoſe unfortunate Gentlemen very well knew, that the Commiſſion was awarded by Authority of Parliament?

Secondly, That it was ordained for the Publick Good.

Thirdly, That the Juſtices of the Kingdom had agreed and given their Advice that ſuch a Commiſſion was legal, and that they could not find out any other Remedy for the good of the King and Kingdom.

Fourthly, That they themſelves were acquainted with the traiterous Intents of the Appellees to murder and deſtroy, under a falſe Colour of Law, all thoſe that had been concerned in the procuring of that Commiſſion in Parliament?

Fifthly, And was it not ſufficiently evident to the Judges, that the Queſtions were framed and forged, and their extrajudicial Anſwers demanded and preſſed in order to accompliſh thoſe illegal and wicked Ends, and by Conſequence to bring Ruin and Deſtruction to the legal Form of the *Engliſh* Government.

Sixthly, Could they be ſo groſly ignorant of the Law, as to fancy that the Reſolutions of Matters which concerned the publick State were ever within the Cognizance of them or their Predeceſſors?

They being but Judges in *Weſtminſter-Hall*, and only Attendants and Aſſiſtants in Parliament.

Seventhly, Or how could they be ſo infatuated and abandoned of all Underſtanding, as to imagine, but that at one Time or another a black Day of reckoning would come, in which the long withheld Hands of Juſtice being let looſe, they ſhould be forced to give an exact Account of ſuch their Opinions delivered in an extrajudicial Manner againſt Law; and made to know how dangerous it was for the Judges of *Weſtminſter Hall* (and who might be only during Pleaſure) to attempt the Alteration, much more the Overthrow of the Civil Government of the Kingdom?

What then I pray could be the true Motives and Reaſons for their giving ſuch Opinions? Why, though they would not ſpeak out, it was that

The true Motives and Reaſons for thoſe Judges giving ſuch Opinions as they did ſet forth.

I. That Law, which took Place with them and was paramount and ſovereign to all other Law, was a premeditated Reſolution to pleaſe and comply with the then preſent Intereſt.

II. That rather than they would run the Hazard of loſing their Cuſhions, they would exchange and part with their Conſciences.

III. That they were called and intituled the Guardians and Interpreters of the Law, and as ſuch might by their accurſed Gloſſes confound the plain Text thereof, making it ſpeak another Language than the Law-makers ever intended, and put ſuch a Senſe upon it, that preceding Judges never durſt ſo much as whiſper.

IV. And laſtly, They might fooliſhly think to juſtify all by *Blake*'s general Principle.

That

That they, as being of the King's Counſel, were bound to obey his univerſal and abſolute Commands without Exception, Limitation, or any Reſtriction whatſoever.

When as it is impoſſible to think they could be ignorant of that ancient Rule of Law and Conſtitution of this Kingdom, *viz.*

Rex Angliæ hoc non poteſt facere quod non poteſt injuſte agere.

The Government of *England* is a Government according to the Laws of the Land. *The Government of* England, *what.*

And the Judges of the Land, *&c.* are obliged by their Oath, and the Duty of their Places, to do Juſtice and Right according to thoſe Laws.

And it is well known, that the King of *England* can do no Wrong. *The King can do no Wrong.*

But as *Seneca* very rightly obſerves,

——*Ubi non eſt pudor, nec cura Juris, ſanctitas, pietas, fides, inſtabile Regnum eſt.* Senecæ Thyeſtis, *Act.* 2.

Which we ſhall find to be too truly verified in the Reign of that unhappy Prince *Richard* II. if the Hiſtories and Records of that Time were conſulted with.

OBJECTION.

But what if after all it be objected, That the Lord Chancellor *Elleſmere* hath told the World,

I. That he would not remember *Richard* the Second his Time (of which, he ſays, ſome of our Chronicles do talk idly, and underſtand little) where Power and Might of ſome potent Perſons oppreſſed Juſtice and faithful Judges for expounding the Law ſoundly and truly. *The Speech of the Lord Chancellor* Elleſmere *in the* Exchequer Chamber *touching the* Poſt-Nati *printed* 1609, anno 7 Jac. 1. P. 18.

II. That Sir *Robert Bealknapp*, that Reverend and Learned Judge, was baniſhed out of the Realm (*relegatus in Gaſconiam*) not for any Deſert or Offence of his, but by the Might of his potent Enemies, and Malice of the Time. And,

III. In his Preface to the loving Reader acquaints the World, That his Argument was viewed by his then Majeſty King *James* I. who gave him Charge to cauſe it to be printed.

To all which I ſhall anſwer,

ANSWER.

I. In his own Words, That his Age, his Infirmity, and Indiſpoſition of Health, and his Decay and Weakneſs of Memory and *Deſuetudo*, and long Diſcontinuance from that Manner of legal Exerciſe, Page 1.

(above

(above fourteen Years) had bereaved him of the Means and Helps that ſhould have enabled him to ſpeak in ſo great a Caſe. For,

II. There are *tanti viri pace*, ſeveral Particulars in his Argument concerning the Force and Strength of the King's Proclamations *, as alſo touching the Authoritative Power of the Opinions of the Judges, which ſhewed, that either his Memory failed him, or elſe he was not very well read in Parliamentary Antiquities, eſpecially when he tells us that the faithful Judges in *Richard* the Second's Time were oppreſſed for expounding the Law ſoundly and truly.

By many Records of Parliament the Judges own Confeſſion, and the Statute Book their extrajudicial Opinions are doomed to be Treaſon.

This is indeed Matter of juſt Admiration, and is neither more nor leſs than, contrary to the Rule of Law, to aver againſt ſo many ſolemn Records of Parliament, the Judges own Confeſſions, and the Statute Book in Print.

Wherein their extrajudicial and illegal Opinions ſtand doomed, even till this very Day to be Treaſon.

So that we ſee notwithſtanding his great Character and Office of Lord Chancellor of *England*, he was in thoſe Particulars extremely deceived and miſled, and by Conſequence he hath impoſed upon the Underſtandings of his Readers.

But who are they that have ſuch an Exemption from human Frailty as that they cannot err? But to go on. And in the next Place to obſerve,

What Effects theſe Judgments had upon the Judges for Generations after.

What powerful Effects theſe Judgments had upon the Judges of *Weſtminſter Hall* for ſeveral Generations after.

And this will appear by a Letter which *Stephen Gardiner* Biſhop of *Wincheſter*, and after Lord Chancellor of *England*, ſent to the Duke of *Somerſet*, Protector to *Edward* VI.

S. Gardiner, *Biſhop of* Wincheſter *his Letter to the D. of* Somerſet *Protector to* Edward VI. *Apud* Fox, Vol. II.

The Words of the Letter are theſe:

" Now, whether the King may command againſt an Act of Par-
" liament, and what Danger they may fall in that break a Law with
" the King's Conſent, I dare ſay, ſays the Biſhop, no Man alive at
" this Day hath had more Experience with the Judges and Lawyers
" than I.

* Item Johan. Holt & Will. de Burgh baillerent en Parlement un Petition en les paroles quenſuent. A treſexcellent treſredoute & treſgratious Seigneur noſtre Seigneur le Roy humblement ſuppliont vos poures lieges Johan. Holt & Will. de Burgh, que, come en le Parlement tenuz a Weſtminſter l'an xi. le Roy Richard que darrein feuſt eſtoit adjudge, que toutz lour terres biens & chateux feuſſent forfaits & leur perſones empriſones & puis exiles, en queux ils demeurerent entour nœf ans & plus, a cauſe que a eux eſtoit ſurmis quils aſſenterent a certains queſtions as queux ils ne aſſenterent unques de leur gree, mes per cohercion dure & compulſion, come veritablement purra eſtre prove par ceux qui feurent preſents. *Rot. Parl.* 2 Hen. IV. N° 37. par Mr. Johan. Holt & Mr. W. de Burgh.

" Firſt

" Firſt I had Experience in my old Maſter the Cardinal, who ob- " tained his Legacy by our late ſovereign Lord's Requeſt at *Rome*, and " in his Sight and Knowledge occupied the ſame with his two Croſſes " and Maces born before him many Years.

See Coke's 4th Inſtit. c. 8. fol. 89. *Articles againſt Card.* Woolſey. *Occupying his legantine Power was adjudged againſt the Laws of the Realm, and an Offence of Premunire.*

" Yet becauſe it was againſt the Laws of the Realm, the Judges " concluded it the Offence of the Premunire.

" Which Concluſion I bear away, and take it for a Law of the " Realm, becauſe the Lawyers ſo ſaid; but my Reaſons digeſted it not.

" The Lawyers, for Confirmation of their Doings, brought in a Caſe " of the Lord *Tiptoft*, as I remember, a jolly Civilian;

Lord Tiptoft *beheaded.*

" He was Chancellor to the King, who, becauſe in the Execution " of the King's Commiſſion he had offended the Laws of the Realm, " he ſuffered on *Tower Hill.*

Several Judges fined for doing againſt the Law of the Realm by the King's Command.

" They brought in Examples of many Judges that had Fines ſet on " their Heads in like Caſe for doing againſt the Law of the Realm by " the King's Commandment, and then was brought in the Judges " Oath, not to ſtay any Proceſs or Judgment for any Commandment " from the King's Majeſty.

" And one Article againſt my Lord Cardinal was, that he had grant- " ed Injunctions to ſtay the Common Law.

" And upon that Occaſion *Magna Charta* was ſpoken of.

" And it was made a great Matter, the Stay of the Common Law.

" And this I learned in that Caſe.

Proclamations againſt the Carriers out of Corn.

" Sithence that Time, being of the Council, when many Proclama- " tions were deviſed againſt the Carriers out of Corn at ſuch a Time " as the Tranſgreſſors ſhould be puniſhed, the Judges would anſwer, " it might not be by the Laws.

" Whereupon enſued the Act of Proclamation.

A Proviſo in the Act of Proclamation, that nothing ſhould be contrary to an Act of Parliament or Common Law.

" In the paſſing of which Act many liberal Words were ſpoken, " and a plain Proviſo, That by the Authority of the Act of Procla- " mation nothing ſhall be made contrary to an Act of Parliament or " Common Law."

Thus far out of the Biſhop's Letter.

Now follows the

Raſt. Stat. 31 Hen. VIII. c. 8.

Act that Proclamations made by the King's Highneſs, with the Ad- vice of his Honourable Council, ſhould be obeyed and kept as though they were made by Act of Parliament.

" Be it enacted by the Authority of this Parliament, with

1. " The King's Majeſty,
2. " The Lords Spiritual and Temporal,
3. " And the Commons Aſſent.

The Parliament enacts, that the King with the Advice of his Council or Majority of them may ſet forth Proclamations and Penalties, which ſhall be obſerved as if made by Act of Parliament.

"That always the King for the Time being, with the Advice of "the moſt Part of them, may ſet forth, at all Times, by Authority "of this Act, his Proclamations under ſuch Penalties and Pains, and "of ſuch Sort, as to his Highneſs and his ſaid Honourable Council, "or the more Part of them, ſhall ſeem neceſſary and requiſite.

"And that thoſe ſame ſhall be obeyed, obſerved, and kept as though "they were made by Act of Parliament for the Time in them limit-"ed, unleſs the King's Highneſs diſpenſe with them or any of them "under his Great Seal.

So as not to be prejudicial to any Perſons Inheritance, Offices, Liberties, Goods, Chattels, or Life.

"Provided always that the Words, Meaning, and Intent of this Act "be not underſtood, interpreted, conſtrued or extended, that by Ver-"tue of it any of the King's Liege People of what Eſtate, Degree "or Condition ſoever he or they be, Bodies Politick and Corporate, "their Heirs or Succeſſors, ſhould have any of his or their Inheri-"tances, lawful Poſſeſſions, Offices, Liberties, Privileges, Franchiſes, "Goods or Chattels, taken from them, or any of them, nor by Vertue "of the ſaid Act ſuffer any Pains of Death, other than ſhall be here-"after in this Act declared.

No Acts, Common Laws, then in Force, nor lawful Cuſtoms of the Realm to be infringed, &c. by any Proclamation to be made by Vertue of this Act of Parliament.

"Nor that by any Proclamation to be made by Vertue of this Act, "any Acts, Common Laws, ſtanding at this preſent Time in Strength "and Force; nor yet any lawful or laudable Cuſtoms of this Realm, "or other his Dominions, nor any of them, ſhall be infringed, broken "or ſubverted, and eſpecially all thoſe Acts ſtanding this Hour in "Force, which have been made in the King's Highneſs Time:

"But that every ſuch Perſon and Perſons, Bodies Politick and Cor-"porate, their Heirs and Anceſtors, and the Heirs and Succeſſors of "every of them, their Inheritances, lawful Poſſeſſions, Offices, Liber-"ties, Privileges, Franchiſes, Goods and Chattels, ſhall ſtand and be "in the ſame State and Condition to every Reſpect and Purpoſe, as if "this Act or Proviſo had never been had nor made.

"Except ſuch Forfeitures, Pains and Penalties, as in this Act, and "in any Proclamation which hereafter ſhall be ſet forth by Authority "of the ſame, ſhall be declared and expreſſed.

34 Hen. VIII. cap. 13. 1 E. VI. c. 12.

There was a further Act made, giving Authority to the King's Proclamations, *Anno* 34 *Hen.* VIII. *c.* 13. But both this and that were repealed by an Act made 1 *Edw. c.* 2.

Before we proceed farther, I deſire the Reader ſhould ſtay and pauſe a while, and ſee if he cannot from the Act of 29 *Hen.* VIII. make theſe Obſervations.

Firſt, In general, That the Act is a Specimen how our ancient Government continued to be till that Time.

Secondly, In Particular.

1. That

1. That neither *Henry* VIII. nor his Council did ever before ſuppoſe, that he could by his Royal Proclamations ſupply the Defect of any Law, or by Colour of ſuch Proclamations oblige the Subjects to any new Penalties without a direct new Statute to impower him ſo to do.

2. That this Act cannot be underſtood to be a Declarative Law.

And the Reaſon is plain, for it enables the King to iſſue forth ſuch Proclamations,

By Vertue of that Act.

3. The Parliament alſo limits and qualifies his Power, and preſcribes Directions both for the making, publiſhing and executing of ſuch Laws as ſhould be ſo made by Proclamation.

And conſequently they had then no Notion at all,

That it was eſſential to the *Engliſh* Royalty, that the King could alter, change, abrogate or ſuſpend either the Common or Statute Laws of the Kingdom, by his ſole uncontrollable Prerogative.

See Coke, lib. 12. fol. 74. *The King's Proclamations cannot make that an Offence which was not ſo before.*

For the King of *England* hath no Prerogative but what the Law of the Land allows him.

But the King indeed, for Prevention of Offences, may by Proclamation admoniſh his Subjects, that they keep the Laws, and do not offend them upon Puniſhment to be inflicted by the Law.

Anderſon's 1 Rep. fol. 152. Caſe 201. *The Queen erecting a new Office in the* Common Pleas *by her Letters Patent, the Judges refuſe to admit the Patentee upon her Commandment.*

But to return from this Digreſſion. About the 28th of Queen *Elizabeth*, *R. Cavendiſh* ſuggeſted to her Majeſty, That it was in her Power to erect an Office for making all Writs of *Superſedeas*, *quia improvide*, &c. in the *Common Pleas*.

Whereupon the Queen by her Letters Patent granted the ſaid Office to *Cavendiſh* for divers Years.

And the Judges were commanded by a Meſſenger to admit him, which they forbore to do.

Upon which *Cavendiſh* procured a Letter to be directed to the Judges under the Sign Manual and Signet, wherein, taking Notice that they had not complied with the Meſſage that ſhe had ſent to them before,

A Letter directed to them with further Command, to ſequeſter the ſaid Office grown due ſince her Grant, &c.

She farther commands them, that they ſhould forthwith ſequeſter the Profits of the ſaid Office that had grown due ſince her Grant, and that ſhould grow due till the Controverſy for the Execution of the ſaid Office ſhould be decided, *&c.*

The Letter being delivered to the Judges, and being conſidered of by them, their Opinion was, That they could not lawfully obey the Queen's Command therein.

The Judges Opinion that they could not lawfully obey this Command, and their Reaſon why.

And the Reaſon they gave was, becauſe others, who then pretended a Right to make out the ſaid Writs, might by ſuch Sequeſtration be diſſeized of their Freehold, which they claimed in the making of ſuch Writs, and in the Fees due for the ſame, for which Reaſon no Sequeſtration was made.

The

The Queen being informed of the Judges Reſolutions by ſome of *Cavendiſh*'s Friends at Court, another Letter was procured from her under the Signet and Sign Manual directed to the ſaid Judges, which follows in theſe Words:

The Queen ſends another Letter to the Judges.

" Truſty and well beloved, we greet you well.

" Whereas We granted to Our truſty and well beloved Servant " *Richard Cavendiſh* Eſq; by Our Letters Patent under Our Great " Seal of *England*, the making and writing of all *Superſedeas*'s upon " Exigents iſſuing out of the Court of *Common Pleas*,

" And have divers Times ſent unto you for his Admittance into " the ſaid Office, as well by Meſſage delivered by Perſons near about " Us, as otherwiſe,

" Which nevertheleſs hath been neglected.

" In Conſideration whereof, We, for that Our ſaid Servant was to " depart into the *Low Countries* for a Seaſon, gave a Commandment " for the Sequeſtration of the Profits of the ſaid Office until Our fur- " ther Pleaſure therein ſhould be declared.

" Wherefore for that We look for ſome more dutiful Regard to be " had by you of our Prerogative Royal, We have thought good to " ſignify unto you Our further Pleaſure in this Behalf.

" Which is, that Our ſaid Servant be no longer with-holden from the " Benefit and Uſe of Our ſaid Grant.

" And theſe are therefore to will and command you, and every of " you, that immediately upon the Receipt hereof, without any fur- " ther Delay, you cauſe preſent Payment to be made unto him, or to " his Aſſignee, of all the aforeſaid Profit ſince the Day of Our ſaid " Grant upon Bond, with Condition, that if, from the Time of his " Admiſſion into the ſaid Office, he, his Deputy or Deputies, ſhall " by Vertue of Our ſaid Grant hold and enjoy the ſame without Evic- " tion or Recovery thereof out of the Hands of him or his Deputy " or Deputies by any other pretended Title to the making and wri- " ting of the ſaid Writs,

" That then the ſaid Bond to be void, *&c.*

" And furthermore Our Will and Pleaſure is, and therefore We will " and command you, that upon Our ſaid Servant's offering of himſelf " unto you in Our ſaid Court this Term, you preſently, without any " further Delay, admit him unto the Uſe, Execution and Profits of " the ſaid Office according to our ſaid Grant.

" For that We be nothing ignorant, that if any of your Clerks " have any ſuch Title or Intereſt as they pretend, both our Laws lye " open for their Remedy, and alſo they be Perſons both for Wealth " and Skill able to recover their own Right, if any ſuch be.

" In Conſideration whereof We look that you and every of you " ſhould dutifully fulfil Our Commandment herein. And theſe Our

" Letters

" Letters ſhall be our Warrant. Given under, &c. 21 *April*, 1587.
" *Anno* 29 *Eliz.*

This Letter being delivered to the Judges, in the Preſence of the Lord Chancellor and the Earl of *Leiceſter*, in the beginning of *Eaſter* Term, *Anno* 29 *Eliz.*

Which was delivered to the Judges in the Preſence of the Lord Chancellor and the Earl of Leiceſter.

The Chancellor declared to the Judges, that the Queen had granted that Patent to *Cavendiſh* out of the great Deſire that ſhe had to provide for his Advancement; and therefore had commanded himſelf and the ſaid Earl to hear the Judges Anſwer to the Contents of that Letter:

And the Judges were to give their Anſwer to them.

Whereupon the Judges took the Letter, and deſired a little Time to conſider of it, and that being allowed them, they peruſed it, and forthwith went back to the ſaid Lords and delivered their Anſwer as followeth, *viz.*

They pray a little Time to conſider of it, which was allowed.

Firſt, That they were willing in all lawful Points to obey her Majeſty dutifully and in humble Manner.

Then they gave the following Anſwer.

Secondly, But that as that Caſe was, they could not obey her *ſans eſtre perjuries*, without being perjured, which they very well knew, that the Queen (if ſhe were informed of it) would not command nor require of them.

Having given this Anſwer, they departed, and their Anſwer was reported to the Queen;

Which was reported to the Queen.

Who then commanded the Chancellor, the Chief Juſtices of the *King's Bench*, and the Maſter of the *Rolls*, to hear the Judges Reaſons, and what the Cauſes were that moved them to give ſuch an Anſwer:

The Chancellor, Chief Juſtice of the King's Bench, and Maſter of the Rolls, *commanded to hear the Judges Reaſon for giving ſuch an Anſwer.*

As alſo what they had to ſay againſt the Queen's Prerogative and Right in that Matter.

And the Queen's learned Counſel was likewiſe commanded to attend;

Who being all aſſembled, the Queen's Serjeant ſhewed that the Queen had a Right and Prerogative to grant the making out of theſe Writs, and ſhewed Precedents of making Writs of *Subpœna*, and of the Office of Curſitors erected by Means of Sir *Nicholas Bacon*, late Keeper of the Great Seal, and of an Office in the *King's Bench*, and furniſhed his Diſcourſe with ſuch Reaſons and Arguments as he had to prove that the Queen might grant this pretended Office.

The Queen's Sergeant argued her Prerogative in the Caſe.

To which the Judges, proteſting that they to the utmoſt of their Power would help the Queen in all her Rights, whereunto they were

bound, not only by common Duty, but by Oath, which Rights they wiſhed might be maintained and preſerved,

For Anſwer ſaid, that this Proceeding was extrajudicial and *hors del Courſe de Juſtice.*

And for that Cauſe they would make no Anſwer to what the Queen's Serjeant had ſaid;

For as for themſelves, they claimed no Advantages by the ſaid Writs, but the Prothonotaries and divers Exigencers of the Court did.

For theſe Officers claimed a Freehold during their Lives in the Profits of ſuch Writs.

And therefore they according to Law and Reaſon ought to be brought to anſwer, and not the Judges.

After all which the Letters abovementioned were produced.

The former Letters charged upon the Judges for Diſobedience to the Queen's Commands.

And the Judges were charged for not having obeyed the Qeeen's Command therein contained.

To that they ſaid they muſt confeſs they had not fulfilled the Queen's Command, but this they ſaid was no Offence or Contempt againſt her Majeſty, becauſe *les Commandments feurent encounter la Ley de Terre, en queux Caſes nul eſt lie d'obeyer tiel Commandement*, i. e.

Becauſe the Commands were againſt the Law of the Land; in which Caſe no Man is bound to obey ſuch Command.

The Judges offer Precedents to juſtify themſelves.

And in Juſtification hereof they offered to ſhew Precedents of former Times.

They were forced to ſhew the Reaſons of their Anſwer.

At which the Chancellor, Maſter of the *Rolls*, and the reſt, ſeeming to be ſomewhat ſurprized, the Judges were forced to ſhew their Reaſons of their Anſwer, who thereupon ſaid,

Firſt, That the Queen herſelf had taken an Oath, *Que elle gardera ſon Leys*, i. e.

That ſhe herſelf would keep and obſerve the Laws.

Secondly, That the Judges had ſworn to do the like.

Thirdly, That for what concerned the Judges, if they ſhould obey thoſe Commands, they ſhould act otherwiſe than the ſaid Laws warranted, and go directly contrary to them, which would be againſt their Oath, and conſequently an Offence againſt God, the Country, and Commonwealth in which they were born and lived.

Fourthly, That if they had thrown off all Fear of God, yet the Examples of others and the Puniſhments of ſuch as had thentofore offended againſt the Laws would be ſufficient to put them in Mind, and to reſtrain them from being guilty of the like.

And

The Precedents they produced.

And the Precedents which they produced were as follows, *viz.*

1. *The Baniſhment of* Hugh le Deſpencer.

I. *Exitium Hugonis Deſpencer*, commonly to be ſeen in the printed Book of *Magna Charta*, did notably declare how great an Offence it was to procure the King to endanger his Oath, and to do things under Colour of his Authority, *encounter le Ley*.

Which *Hugh* was Lord Chamberlain to King *Edward* II, and then a Man of great Power.

2. *Of Judge* Thorpe.

II. * The next Precedent was that of *Thorpe*, a Judge in King *Edward* the Third's Time, who for breaking his own and the King's Oath, was adjudged to a great Puniſhment.

3. *Several Precedents in* Richard II's *Time.*

III. And then they remember the ſeveral Precedents in King *Richard* the Second's Time, which appeared in the Statutes and Hiſtories of that King's Reign, (and which we have already given an Account of out of the *Rolls of Parliament*).

4. *The Indictments againſt* Empſon *and* Dudley.

IV. And laſtly, They further urge in their Defence the ſeveral Indictments of *Empſon*, late Counſellor to King *Henry* VII, which had been made and taken in divers Counties of *England*, at which time another (*viz. Dudley*) was proceeded againſt in like manner, for the like Offences.

The Indictment in the Book is in Latin, *which I have thus tranſlated.*

What the Jurors preſent in Empſon's *Indictment.*

And they produced the Tenor of one of the ſaid Indictments, which, as they ſaid, was to be ſeen among the Records.

The Jurors preſent, That *Richard Empſon*, late of *London*, Knt. late Counſellor of the moſt excellent Prince *Henry*, late King of *England*, upon the 17th Day of *May*, in the 12th Year of the ſaid late King's Reign, and at divers Times before and after at *London*, in the Pariſh of *St. Bridget*, in the Ward of *Farringdon Without* †, not having God before his Eyes, but as a Child of the Devil, ſubtilly contriving to leſſen and diminiſh the Honour, Dignity, and Proſperity of the ſaid late King, and the Proſperity of his Kingdom of *England*; and that he might the better obtain ſingular Favours from the ſaid late King to

* Conſideratum eſt — quod, quia prædictus W. de Thorp, qui ſacramentum Domini Regis, quod erga populum ſuum habuit, fregit malicioſe, falſe, & rebelliter in quantum in ipſo fuit, & ex cauſis ſupradictis [viz. quia cepit munera contra juramentum ſuum] ſuſpendatur; & quod omnia terræ & tenementa & catalla ſua remaneant forisfacta. *Rot. Pat.* 24 *Edw.* III. *pars* 3. *m.* 2. *Coke's* 3d *Inſt. cap.* 68. *fol.* 145. *of Bribery, Extortion, Exaction,* &c.

† Empſon *and* Dudley *were two great Miniſters, but wicked Inſtruments to* Henry VII. *They outdid all that went before them; for what by vexatious Suits upon penal but obſolete Laws, what by unjuſt Impriſonments, and other violent and illegal Proceedings, they raiſed a general Odium upon the Government. For which, and other Crimes, they were (at laſt) in the firſt Year of* Henry VIII. *both found guilty of Treaſon in a legal Tryal, and after both executed.* Dr. *Burnet's* Hiſtory of the Reformation, *part* 1. *fol.* 2. qui eorum veſtigia inſiſtunt, eorum exitus perhorreſcant. *Coke's* 4th *Inſt. fol.* 41.

himſelf,

himſelf, whereby he might become a great Miniſter of State, and govern the whole Kingdom of *England* according to his Pleaſure, falſely, deceitfully, and traiterouſly ſubverting the Law of *England*, had of his own falſe Covin, and ſubtile Contrivance, and contrary to the Common Law of *England*, cauſed and procured divers of the ſaid late King's Leiges to be indicted of divers Felonies, Murders, and of other Articles and Offences by him the ſaid *Richard* ſuppoſed to have been committed, and had abetted and encouraged the ſame.

And when the ſaid Perſons were ſo indicted, he ſent them without any Proceſs according to the Law of the Land, to divers of the ſaid late King's Priſons; to wit, to the *Fleet*, the *Compter*, and the *Tower* of *London*, there to be detained during his the ſaid *Empſon*'s Pleaſure.

And cauſed them to be there detained, ſo that they could not come to anſwer to ſuch falſe Indictments, according to the Law of the Kingdom of *England*, until ſuch Time as they had agreed with this *Richard* upon divers great Fines and Ranſoms, as well for the Profit of the ſaid late King, as alſo for his the ſaid *Richard*'s particular Gain, in Subverſion of the Laws, and to the impoveriſhing, impairing, and grievous Damage of the ſaid Lieges.

And alſo that the ſaid *Richard* on the Day and Year abovementioned, at *London*, in the Pariſh and Ward aforeſaid, and at divers Times before and after, cauſed and procured ſeveral falſe Inquiſitions ‡, and Offices of Intruſions, and Alienations of Manors, Lands, and Tenements, of divers of the ſaid late King's Lieges to be found, that they held the Manors, Lands, and Tenements, in thoſe Inquiſitions ſpecified of the King in chief, or otherwiſe, when it was not ſo.

* And afterwards when the ſaid Lieges tendred their Traverſes in the King's Court to the Inquiſitions ſo taken, according to the Law of *England*, the ſaid Lieges could not be admitted to their Traverſes, but the ſaid *Richard* kept and with-held them from taking their juſt and legal Traverſes to the ſaid Offices, until ſuch Time as they had agreed with the ſaid *Richard* to make divers great and inſupportable Fines and Ranſoms, as well for the ſaid late King's Profit, as for his own particular Advantage, to the great Impoveriſhment of the ſaid Lieges.

‡ *An Act concerning untrue Inquiſitions, procured by* Empſon *and* Dudley. Raſt. Stat. 1 Hen. VIII. cap. 10.

* *Moſt of theſe Miſchiefs were occaſioned by a Statute made* 11 Henry VII, *wherein it was enacted, that the Juſtices of Aſſizes in their Seſſions, and the Juſtices of the Peace in every County, upon Informations for the King, ſhould have Authority to hear and determine all Offences and Contempts (ſaving Treaſon, Murder, or Felony) committed by any Perſon againſt the Effect of any Statute made and not repealed. Which Statute, foraſmuch as by Force thereof many ſiniſter and crafty, feigned and forged Informations had been purſued againſt divers of the King's Subjects, to their great Damage and wrongful Vexation, it was* 1 Henry VIII, *repealed*. Raſt. Stat. 11 Hen. VII. cap. 3. 1 Hen. VIII. cap. 6.

And

And alſo for that the ſaid *Richard* on the Day and Year aforeſaid, in the Pariſh and Ward aforeſaid, and at divers Times before and ſince, when divers of the King's Lieges, who held ſeveral Manors, Lands, and Tenements of the King by Knight's Service, which had been in Wardſhip in the King's Hands during their Nonage, were come of full Age, and would ſue out their Livery in proper Form, according to the Law of *England*, and the Courſe of the Court of *Chancery*, he the ſaid *Richard* would not ſuffer them to be received thereunto, but totally excluded them from the Benefit thereof, until ſuch Time as they agreed with the ſaid *Richard* to make divers great and inſupportable Fines and Ranſoms, as well to the Profit of the ſaid King, as his own private Profit, to the great Hurt and Diſhonour of the ſaid late King's People, and in Contempt of the King, and to the grievous Damage of his ſaid Lieges.

And further, That whereas divers of the King's Subjects ſtood outlawed, as well in divers Actions at the Suit of the Party, as at the ſaid late King's own Suit, for divers Treſpaſſes, Contempts, and other Articles and Offences, the ſaid *Richard* the Day and Year aforeſaid, and at divers Times before and after at *London*, *&c.* falſely, deceitfully, and traiterouſly, and contrary to the Law of *England*, deviſed that none of the ſaid Subjects ſo outlawed, ſhould obtain the ſaid King's Letters Patents of Pardon of their Outlawries in the *Chancery*, according to Law:

But informed the ſaid late King, inſtigated him, and cauſed him to exact and take of his Subjects ſo outlawed the Moiety of the Iſſues and Profits of all their Lands, and Tenements, for the Space of two Years, for their Fines and Ranſoms on that Behalf, contrary to the Law of the Land, and converted the ſame to his the ſaid late King's own Uſe, though the ſaid *Richard* very well knew that the Law of the Realm was, and always had been, to the contrary.

Whereby it came to paſs that divers and ſundry of the King's Subjects were diverſly and in manyfold-wiſe vexed with thoſe Grievances and undue Exactions, inſomuch that the ſaid King's People, *multipliciter murmurabant & malignabant, in magnum periculum ipſius nuper Regis Regni ſui Angliæ, ac ad ſubverſionem Legum, & Conſuetudinum ejuſdem Regni* †.

After which theſe following Statutes were cited, *viz. Magna Charta, cap.* 20. made *anno nono Hen.* III, and the Statute 5 *Edw.* III. *cap.* 9, which runs thus:

† *Whereas* Richard Empſon, *late of* London, *Knt. and* Edmund Dudley, *late of* London, *Eſq; now ſtand and be attainted of High Treaſon, after the Courſe of the Common Law.* An Act annulling and revoking all Feoffments made to *Empſon* and *Dudley.* Raſt. Stat. Hen. VIII. cap. 15. Stow *writes that they were both after attainted of High Treaſon in the ſame Parliament.* Stow's Annals, fol. 489.

Magna Charta, c p. 29. *cited by the Judges, and the Statute* 5 Edw. VII. cap. 9.

The Parliament's Care in preſerving the Liberties and Properties of the Subject.

And the Statute of 28 Edw. III. cap. 3.

" No Freeman ſhall be taken or impriſoned, or be diſſeized of his " Freehold, or Liberties, or Free Cuſtom, or be outlawed or exiled, " or any otherwiſe deſtroyed; nor we ſhall paſs upon him nor con- " demn him, but by lawful Judgment of his Peers, or by the Law of " the Land. We ſhall ſell to no Man, we ſhall deny nor defer to no " Man either Juſtice or Right.

Together with a Statute made 28 *Edward* III, *cap.* 3, which provides, " That no Man, of what Eſtate or Condition ſo ever he be, ſhall be " ouſted of his Lands or Tenements, nor kept in Priſon, nor diſinherit- " ed, nor put to death, without being put to anſwer by due Proceſs of " Law.

No Letters of Signet or Privy Seal ſhall be in Damage of the Realm.

And another made 11 *Richard* II, whereby it is ordained, " That " neither Letters of Signet, nor of the King's Secret Seal, ſhall be from " thenceforth ſent in Damage and Prejudice of the Realm."

By which Laws the Office and Duty of Judges, and of all others appears;

By all which Precedents and Authorities it appears how great an Offence it is to break the Laws of the Land.

As alſo by the above-cited Precedents it was evident, how great an Offence it is, voluntarily to break the Laws of the Land, which all of what Degree ſoever are prohibited to do.

For which Cauſes, and becauſe the Queen and the Judges ‡ were ſworn, they ſaid, *que ils ne voilent fair accordant a les dits Letters*, *i. e.* they would not do according to the ſaid Letters.

The Queen's Oath and the Judges appear in print, and therefore are not neceſſary to be tranſcribed.

All which the Chancellor reported to the Queen, which ſhe well approved of.

All which was reported by the Lord Chancellor to the Queen, with her good Approbation of the Matters aforeſaid, and of the Reaſons alledged, which the Lord Chief Juſtice *Anderſon* (who makes this Report) ſaid he had heard her Majeſty well accepted of.

So that nothing more was done in it.

But no more was done in it; nor did the Judges hear further of it that Term, nor the next, which made them think that no more would be done in it.

Here the Report ends.

OBSERVATIONS.

Now whoever will conſider the Biſhop of *Wincheſter*'s Letter, and this memorable Caſe of *Cavendiſh*, muſt, without a ſtrong Biaſs of Partiality, do that Right and Juſtice to the *Engliſh* Government, as to confeſs that it is no notorious falſe State Maxim to aſſert,

Francklin's Annals, fol. 820. col. 2.

Kings of England *never err.*

" That Kings, as they are Kings of *England*, are never ſaid to err, " only the beſt may be abuſed by Miſinformation,

" The higheſt Point of Prerogative is, the King of *England* can do " no Wrong.

‡ *The Courage and Magnanimity of the Judges of the* Common Pleas *in Queen* Elizabeth's *Reign in Matters of Juſtice, wherein the Prerogative and the Subjects Rights were in Diſpute.*

" If

" If therefore by the Subtilty of Miſinformers, by the ſpecious falſe " Pretences of Publick Good, by cunning and cloſe Contrivance of their " Ways to ſeduce the ſacred royal Perſon, he ſhall at any Time be cir- " cumvented or ſurprized, or over-wrought and drawn to command " things contrary to Law, and that the ſame be done accordingly,

" Theſe Commands will be void, and the King innocent, even in " his very Perſon, being defended by his Prerogative.

If thereby they command contrary to Law, the Command is void, and the King innocent, being defended by his Prerogative.

" Nevertheleſs the Authors in ſuch Miſinformations, and Actors " in thoſe Abuſes, will ſtand liable, and expoſed to ſtrict Examina- " tion and juſt Cenſure, as having nothing to defend themſelves but " the Colour of a void Command, made void by juſt Prerogative, and " by the fundamental and true Reaſon of State and Monarchy. And " what Difference is there, or can be in Law, between a void Com- " mand and no Command at all?"

Thus ſaid the Speaker of the Houſe of Commons to King *Charles* the Firſt.

For Concluſion.

Thus we ſee that the Execution of *Treſilian*, *Blake*, and *Uſke*, and the reſt, together with the perpetual Baniſhment of the other Legicides, did for ſeveral following Generations ſerve as an excellent Almanack for the Meridian of *Weſtminſter Hall*, and a *Circumſpecte Agatis* to many ſucceeding Judges, until about the End of Queen *Elizabeth*'s Reign.

The Puniſhment of Treſilian, &c *an excellent Almanack calculated for the Meridiar of* Weſtminſter Hall *till Queen* Elizabeth's *Time.*

And let it be ever remembred what *Tacitus* tells us in his Hiſtory concerning *Cremutius Cordus.*

Tacitus, lib. Annal. 4. cap. 35.

Socordiam eorum irridere libet, qui præſenti potentia credunt extingui poſſe etiam ſequentis Ævi memoriam.

But we muſt now paſs on to a more troubled and perplexed Undertaking.

CHAP.

CHAP. IX.

Proceedings in the Parliament of 21 Hen. VIII. *touching Cardinal* Woolſey's *high Miſdemeanours whilſt he was Lord Chancellor of* England.

Grafton's Chronicle, *pag.* 1189.

DURING this Parliament there was brought down to the Commons the Book of Articles, which the Lords had put to the King againſt the Cardinal, ſaith *Grafton*.

The Articles as they are given us by my Lord *Coke*, thus follow:

Articles againſt Cardinal Woolſey, Coke's 4 Inſt. fol. 89.

Conſtrained by Neceſſity of our Fidelity and Conſcience, complain and ſhew to your moſt Royal Majeſty, we your Grace's humble, true, faithfull, and obedient Subjects: That the Lord Cardinal of *York*, lately your Grace's Chancelour, preſuming to take upon him the Authority of the Pope's Legate *De Latere*, hath by divers and many ſundry Ways and Faſhions committed high and notable grievous Offences, miſuſings, altering, and ſubverting the Order of your Grace's Laws: And otherwiſe contrary to your high Honour, Prerogative, Crown, Eſtate, and Dignity Regal, to the ineſtimable great Hinderance, Diminution, and Decay of the Univerſal Wealth of this your Grace's Realm. And it is touched ſummarily and particularly in certain Articles here following, which be but a few in Compariſon of all his Enormities, Exceſſes, and Tranſgreſſions, committed againſt your Grace's Laws.

That is to ſay,

The Sovereignty, Prerogative, regal Juriſdiction, and Freedom of the Crown of England.

I. Where your Grace and noble Progenitors within this your Realm of *England*, being Kings of *England*, have been ſo free, that they have had in all the World none other Sovereign, but immediate ſubject to Almighty God in all Things touching the Regalty of your Crown of *England*, and the ſame Pre-eminence, Prerogative, Juriſdiction, lawful and peaceable Poſſeſſion, your Grace and your noble Progenitors, have had, uſed, and enjoyed, without Interruption or Buſineſs therefore,

fore, by the Space of two hundred Years and more: Whereby your Grace may preſcribe againſt the Pope's Holineſs, that he ſhould not nor ought to ſend or make any Legate, to execute any Authority Legatine contrary to your Grace's Prerogative within this your Realm. Now the Lord Cardinal of *York*, being your Subject and natural Liege born, hath of his high orgallous, and inſatiable Mind, for his own ſingular Advancement and Profit, in Derogation and to the great Impleſhiſment and Hurt of your ſaid Regal Juriſdiction and Prerogative, and the long Continuance of the Poſſeſſion of the ſame, hath obtained Authority Legatine: By reaſon whereof he hath not only hurt your ſaid Preſcription, but alſo by the ſaid Authority Legatine hath ſpoiled and taken away from many Houſes of Religion, within this your Realm, much Subſtance of their Goods: And alſo hath uſurped upon all your Ordinaries within this your Realm, much Part of their Juriſdiction, in Derogation of your Prerogative, and to the great Hurt of your ſaid Ordinaries, Prelates, and Religious.

Cardinal of York.

The Cardinal by his Authority Legatine ſpoiled many Houſes of Religion, uſurped upon Ordinaries.

II. Alſo the ſaid Lord Cardinal, being your Embaſſador in *France*, made a Treaty with the *French* King for the Pope, your Majeſty not knowing any Part thereof, nor named in the ſame; and binding the ſaid *French* King to abide his Order and Award, if any Controverſy or Doubt ſhould ariſe upon the ſame, betwixt the ſaid Pope and the *French* King.

Embaſſadors. A Treaty by him made with the French *King for the Pope, without his Majeſty's Privity,* &c.

III. Alſo the ſaid Lord Cardinal, being your Embaſſador in *France*, ſent a Commiſſion to Sir *Gregory de Caſſalis*, under your Great Seal, in your Grace's Name, to conclude a Treaty of Amity with the Duke of *Ferrara*, without any Commandment or Warrant of your Highneſs, nor your ſaid Highneſs advertiſed or made privy to the ſame.

Embaſſador. A Commiſſion ſent by him to Sir Gregory de Caſſalis, *under the Great Seal, to conclude a Treaty,* &c. *the King knowing nothing of it.*

IV. Alſo the ſaid Lord Cardinal, of his preſumptuous Mind, in divers and many of his Letters and Inſtructions ſent out of this Realm to outward Parts, had joined himſelf with your Grace, as in ſaying and writing, *The King and I would you ſhould do thus*; *The King and I do give unto you our hearty Thanks.* Whereby it is apparent, that he uſed himſelf more like a Fellow to your Highneſs than like a Subject.

The King and I.

V. Alſo where it hath ever been accuſtomed within this Realm, That when Noblemen do ſwear their Houſhold Servants, the firſt Part of their Oath hath been, That they ſhould be true Liegemen to the King and his Heirs, Kings of *England*; the ſame Lord Cardinal cauſed his Servants to be only ſworn to him, as if there had been no Sovereign above him.

Noblemen ſwearing their Houſhold Servants firſt to be true Liegemen to the King, &c. *The Cardinal ſwore his only to himſelf.*

VI. And alſo whereas your Grace is our Sovereign Lord and Head, in whom ſtandeth all the Surety and Wealth of this Realm; the ſame Lord Cardinal, knowing himſelf to have the foul and contagious Diſeaſe of the Great Pocks broken out upon him in divers Places of his Body, came daily to your Grace, rowning in your Ear, and blowing upon your moſt noble Grace with his perilous and infective Breath, to the marvellous Danger of your Highneſs, if God of his infinite Goodneſs had not better provided for your Highneſs: And when he was once healed of them, he made your Grace to believe, that his Diſeaſe was an Impoſthume in his Head, and of none other Thing.

Having the Great Pocks broken out in ſeveral Places of his Body, he yet came daily into the King's Preſence, to the endangering of the ſaid King.

Proviſion.

VII. Alſo the ſaid Lord Cardinal, by his Authority Legatine, hath given by Prevention the Benefices of divers Perſons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes therefore provided; by reaſon whereof he is in Danger to your Grace of Forfeiture of his Lands and Goods, and his Body at your Pleaſure.

Premunire.

Counſellor.

VIII. Alſo the ſaid Lord Cardinal, taking upon him otherwiſe than a true Counſellor ought to do, hath uſed to have all Embaſſadors to come firſt to him alone; and ſo hearing their Charges and Intents, it is to be thought he hath inſtructed them after his Pleaſure and Purpoſe, before that they came to your Preſence, contrary to your high Commandment by your Grace's Mouth to him given; and alſo by other Perſons ſent to him by your Grace.

Foreign Embaſſadors firſt coming to him,

Contrary to the King's Command.

Letters ſent from beyond Seas firſt to him.

IX. Alſo the ſaid Lord Cardinal hath practiſed ſo that all manner of Letters ſent from beyond the Seas to your Highneſs, have come firſt to his Hands, contrary to your high Commandment by your own Mouth, and alſo by others ſent to him by your Grace: By reaſon whereof your Highneſs nor any of your Council, had Knowledge of no Matters but of ſuch as it pleaſed him to ſhew them; whereby your Highneſs and your Council have been compelled of very Force to follow his Devices, which oftentimes were ſet forth by him under ſuch crafty and covert Meanings, that your Highneſs and your Council have oftentimes been abuſed; inſomuch that when your Council have found and put divers Doubts and Things, which afterwards have enſued, he to abuſe them uſed theſe Words, *I will lay my Head that no ſuch Thing ſhall happen.*

So that the King nor his Council knew any thing but what he was pleaſed to ſhew them.

His Way of Inſinuation.

Foreign Intelligence not ſuffered to come to any but to him, &c.

X. Alſo the ſaid Lord Cardinal hath practiſed, that no manner of Perſon having Charge to make Eſpial of Things done beyond the Sea, ſhould

ſhould at their Return come firſt to your Grace, nor to any other of your Council, but only to himſelf: And in caſe they did the contrary, he puniſhed them for their ſo doing.

XI. Alſo the ſaid Lord Cardinal hath granted Licences under your Great Seal, for carrying out of Grain and other Victuals, after the Reſtraint hath been made thereof; for his own Lucre and ſingular Advantage of him and his Servants, for to ſend thither as he bare ſecret Favour, without your Grace's Warrant or Knowledge thereof.

Licences to tranſport Grain and Victuals.

XII. Alſo the ſaid Lord Cardinal uſed many Years together, not only to write unto all your Ambaſſadors reſident with other Princes, in his own Name, all Advertiſements concerning your Grace's Affairs being in their Charge; and in the ſame his Letters wrote many Things of his own Mind, without your Grace's Pleaſure known, concealing divers Things which had been neceſſary for them to know; but alſo cauſed them to write their Advertiſements unto him: And of the ſame Letters he uſed to conceal, for the compaſſing of his Purpoſe, many Things both from all your other Counſellors and yourſelf alſo.

Lord Cardinal's writing to Embaſſadors reſident with other Princes in his own Name.

Concealing Things from them neceſſary to be known.

XIII. Alſo where good Hoſpitality hath been uſed to be kept in Houſes and Places of Religion in this Realm, and many poor People thereby relieved, the ſaid Hoſpitality and Relief is now decayed and not uſed: And it is commonly reported, that the Occaſion thereof is, becauſe the ſaid Lord Cardinal hath taken ſuch Impoſitions of the Rulers of the ſaid Houſes, as well for his Favour in making of Abbots and Priors, as for his Viſitation by his Authority Legatine: And yet nevertheleſs taketh yearly of ſuch Religious Houſes ſuch yearly and continual Charges, as they be not able to keep Hoſpitality, as they were uſed to do; which is a great Cauſe that there be ſo many Vagabonds, Beggars, and Thieves.

Hoſpitality in Houſes of Religion decayed.

Yearly Charges taken from them.

A great Cauſe of increaſing Vagabonds, &c.

XIV. Alſo where the ſame Lord Cardinal ſaid, before the Suppreſſion of ſuch Houſes as he hath ſuppreſſed, that the Poſſeſſions of them ſhould be ſet to farm amongſt your Lay Subjects, after ſuch reaſonable yearly Rent as they ſhould well thereupon live, and keep good Hoſpitality; and now the demeſne Poſſeſſion of the ſame Houſes, ſince the Suppreſſion of them, hath been ſurveyed, met, and meaſured by the Acre, and be now ſet above the Value of the old Rent: And alſo ſuch as were Farmers by Covent Seal and Copy-holders, be put out and amoved of their Farms, or elſe compelled to pay new Fines, contrary to all Equity and Conſcience.

Suppreſſion of Houſes.

His Proviſo to ſet reaſonable Rents, &c.

But yet his ſetting them above the Value of the old Rent.

New Fines impoſed, or elſe to turn out.

XV. Alſo

Abuſed the Privy Council.

XV. Alſo the ſaid Lord Cardinal, ſitting amongſt the Lords, and others of your moſt Honourable Privy Council, uſed himſelf, That if any Man would ſhew his Mind, according to his Duty, contrary to the Opinion of the ſaid Cardinal, he would ſo take him up with his accuſtomable Words, that they were better to hold their Peace than to ſpeak; ſo that he would hear no Man ſpeak, but one or two great Perſonages; ſo that he would have all the Words to himſelf, and conſumed much Time with a fair Tale.

He would have all the Words to himſelf.

His Ambition and Pride. Want of Diſpatch.

XVI. Alſo the ſaid Lord Cardinal, by his Ambition and Pride, hath hindered and undone many of your poor Subjects, for Want of Diſpatchment of Matters: For he would no Man ſhould meddle but himſelf; inſomuch that it had been affirmed by many wiſe Men, that ten of the moſt wiſe and expert Men in *England* were not ſufficient in convenient Time to order the Matters that he would retain to himſelf. And many Times he deferred the ending of Matters, becauſe that Suitors ſhould attend and wait upon him; whereof he had no ſmall Pleaſure, that his Houſe might be repleniſhed with Suitors.

No Man ſhould meddle but himſelf.

Defer Matters to make Suitors to attend upon him.

Taken the Goods of rich Spiritual Men deceaſed,

XVII. Alſo the ſaid Lord Cardinal, by his Authority Legatine, hath uſed, if any Spiritual Man having any Riches or Subſtance deceaſed, he hath taken their Goods as his own; by reaſon whereof their Wills be not performed: And one Mean he had to put them in Fear, that were made Executors, to refuſe to meddle.

and frightening their Executors from meddling.

All Ordinaries, &c. to compound with him yearly, or he would uſurp upon their Juriſdiction, and ſo extort Treaſure.

XVIII. Alſo the ſaid Lord Cardinal conſtrained all Ordinaries in *England* yearly to compound with him, or elſe he will uſurp half or the whole of their Juriſdiction by Prevention; not for good Order of the Dioceſes, but to extort Treaſure: For there is never a poor Archdeacon in *England*, but that he paid yearly to him a Portion of his Living.

Slandered Religious Houſes to the Pope.

By Authority of his Bull ſuppreſſed thirty Houſes of Religion.

XIX. Alſo the ſaid Lord Cardinal hath not only by his untrue Suggeſtion to the Pope, ſhamefully ſlandered many good Religious Houſes, and good virtuous Men dwelling in them, but alſo ſuppreſſed by reaſon thereof, above thirty Houſes of Religion. And where, by Authority of his Bull, he ſhould not ſuppreſs any Houſe, that had more Men of Religion in Number above the Number of ſix or ſeven, he hath ſuppreſſed divers Houſes that had above the Number: And thereupon hath cauſed divers Offices to be found by Verdict untruly, that the Religious Perſons ſo ſuppreſſed had voluntarily forſaken

Cauſes divers Offices to be found untruly.

ſaken their ſaid Houſes; which was untrue, and ſo hath cauſed open Perjury to be committed, to the high Diſpleaſure of Almighty God.

Cauſed open Perjury to be committed.

XX. Alſo the ſaid Lord Cardinal hath examined divers and many Matters in the *Chancery*, after Judgment thereof given at the Common Law, in Subverſion of your Laws; and made ſome Perſons reſtore again to the other Party condemned That that they had in Execution by Virtue of the Judgment at the Common Law.

Examined Matters in Chancery *after Judgment. In Subverſion of the Laws.*

XXI. Alſo the ſaid Lord Cardinal hath granted many Injunctions by Writ, and the Party never called thereunto, nor Bill put in againſt them; and by reaſon thereof, divers of your Subjects have been put from their lawful Poſſeſſions of their Lands and Tenements. And by ſuch Means he hath brought the more Party of the Suitors of this your Realm before himſelf; whereby he and divers of his Servants have gotten much Riches, and your Subjects ſuffered great Wrongs.

Granting many Injunctions by Writ, and the Party never called, nor Bill filed againſt them; whereby the Subjects have been put from their lawful Poſſeſſions.

XXII. Alſo the ſaid Lord Cardinal, to augment his great Riches, hath cauſed divers Pardons granted by the Pope to be ſuſpended, which could not be revived 'till that the ſaid Lord Cardinal were rewarded, and alſo have a yearly Penſion of the ſaid Pardon.

The Pope's Pardons ſuſpended by him. He to be rewarded before they could be revived.

XXIII. Alſo the ſaid Lord Cardinal, not regarding your Laws nor Juſtice, of his extort Power hath put out divers and many Farmers of his Lands, and alſo Patentees of the Archbiſhoprick of *York*, and the Biſhoprick of *Wincheſter*, and of the Abbey of *St. Albans*; which had good and ſufficient Grant thereof by your Laws.

His Oppreſſion of Farmers and Patentees.

XXIV. Alſo the ſame Lord Cardinal, at many Times, when any Houſes of Religion have been void, he hath ſent his Officers thither, and with crafty Perſuaſion hath induced them to compromit their Election in him: And that before he named or confirmed any of them, he and his Servants received ſo much great Goods of them, that in manner it hath been to the undoing of the Houſe.

Getting to himſelf the Elections of Abbots, Priors, &c. And be bribed before he would nominate: To the Houſes undoing.

XXV. Alſo by his Authority Legatine the ſame Lord Cardinal hath viſited the moſt part of the Religious Houſes and Colleges of this your Realm, and hath taken from them the twenty fifth Part of their Livelihood; to the great Extortion of your Subjects, and Derogation of your Laws and Prerogative, and no Law to bear him ſo to do.

Viſited moſt of the Religious Houſes. His Extortion, by taking away the twenty fifth Part of their Livelihood.

Injunctions.

XXVI. And alſo, when Matters have been near at Judgment, by Proceſs at your Common Law, the ſame Lord Cardinal hath not only given and ſent Injunctions to the Parties, but alſo ſent for your Judges, and expreſsly by Threats commanded them to defer the Judgment, to the evident Subverſion of your Laws, if the Judges would ſo have ceaſed.

Threatened Judges to defer giving Judgment.

His Penſion out of France.

XXVII. Alſo, whereas neither the Biſhop of *York* nor *Wincheſter*, nor the Abbey of *St. Albans*, nor the Profit of his Legation, nor the Benefit of the *Chancery*, nor his great Penſion out of *France*, nor his Wards and other inordinate Taking, could not ſuffice him; he hath made his Son *Winter* to ſpend ſeven and twenty hundred Pounds by the Year, which he taketh to his own Uſe, and giveth him not paſt two hundred Pounds yearly to live upon.

Making in Appearance his Son Winter *ſpend* 2700 l. *yearly, and yet he not allowing him above* 200 l. *yearly.*

Legate de Latere *his Promiſe.*

XXVIII. Alſo where the ſaid Lord Cardinal did firſt ſue unto your Grace, to have your Aſſent to be *Legate de Latere*, he promiſed and ſolemnly proteſted, before your Majeſty, and before the Lords both Spiritual and Temporal, that he would nothing do nor attempt, by the Virtue of his Legacy, that ſhould be contrary to your gracious Prerogative or Regality, or to the Damage or Prejudice of the Juriſdiction of any Ordinary; and that by his Legacy no Man ſhould be hurted nor offended: And upon that Condition and no other he was admitted by your Grace, to be Legate within this your Realm: Which Condition he hath broken, as is well known to all your Subjects. And when that he made this Promiſe, he was buſy in his Suit at *Rome* to viſit all the Clergy of *England*, both exempt and not exempt.

To do nothing againſt Prerogative or Regality; or to the Prejudice of any Ordinary's Juriſdiction.

His Breach of Promiſe.

Untrue Surmiſe to the Pope, of the Clergy here.

XXIX. Alſo, upon the Suit of the ſaid Lord Cardinal at *Rome*, to have his Authority Legatine, he made untrue Surmiſe to the Pope's Holineſs againſt the Clergy of your Realm, which was, that the regular Perſons of the ſaid Clergy, had given themſelves *in reprobum ſenſum*; which Words St. *Paul* writing to the *Romans*, applied to abominable Sin; which Slander to your Church of *England* ſhall for ever remain in the Regiſter at *Rome*, againſt the Clergy of this your Realm.

His further Oppreſſion and Extortion.

XXX. Alſo the ſaid Lord Cardinal had the more Part of the Goods of Dr. *Smith* late Biſhop of *Lincoln*, Biſhop *Savage* of *York*, Maſter *Dalbye* Archdeacon of *Richmount*, Maſter *Tonyers*, Dr. *Rothall* late Biſhop of *Durham*, and of Dr. *Fox* late Biſhop of *Wincheſter*; contrary to their Wills and your Laws and Juſtice.

XXXI. Alſo

XXXI. Alſo at Oyer and Terminer at *York*, Proclamation was made, That every Man ſhould put in their Bills for Extortion of Ordinaries; and when divers Bills were put in againſt the Officers of the ſaid Lord Cardinal, of Extortion, for taking Twelve Pence in the Pound for Probation of Teſtaments; whereof divers Bills were found before Juſtice *Fitzherbert* and other Commiſſioners; the ſaid Lord Cardinal removed the ſaid Indictments into the *Chancery* by *Certiorari*, and rebuked the ſaid *Fitzherbert* for the ſame Cauſe.

Extortion of Ordinaries.

Indictments of Extortion of Ordinaries removed into the Chancery. And his rebuking the Chief Juſtice.

XXXII. Alſo the ſaid Lord Cardinal hath buſied and endeavoured himſelf, by crafty and untrue Tales, to make Diſſenſion and Debate amongſt your Nobles of your Realm, which is ready to be proved.

Made Debate between the Nobles of the Realm.

XXXIII. Alſo the ſaid Lord Cardinal's Officers have divers Times compelled your Subjects to ſerve him with Carts for Carriage; and alſo his Servants have taken both Corn and Cattle, Fiſh, and all other Victuals, at your Grace's Price, or under, as though it had been for your Grace; which is contrary to your Laws.

Purveyance for him at the King's Price or under. Vide inf. 35, 36.

XXXIV. Alſo the ſaid Lord Cardinal hath miſuſed himſelf in your moſt honourable Court, in keeping of as great Eſtate there in your Abſence, as your Grace would have done, if you had been there preſent in your own Perſon.

Keeping great Eſtate in Court in the King's Abſence, as the King himſelf.

XXXV. Alſo his Servants by Virtue of your Commiſſion under your Broad Seal by him to them given, have taken Cattle and all other Victual at as low a Price as your Purveyors have done for your Grace by your Prerogative, againſt the Laws of your Realm.

Purveyance. Prerogative in taking Purveyance.

XXXVI. Alſo w' ere it hath been accuſtomed that your Purveyors for your honourable Houſehold have had yearly out of your Town and Liberty of *St. Albans* three or four hundred Quarters of Wheat, Truth it is, that ſince the Lord Cardinal had the Room of the Abbot that your ſaid Purveyors could not be ſuffered by him and his Officers to take any Wheat within the ſaid Town or Liberty.

Purveyance denied by him and his Officers in the Town and Liberty of St. Albans *when he was Abbot.*

XXXVII. Alſo he hath divers Times given Injunctions to your Servants that have been for Cauſes before him in the *Star-Chamber*, that they, nor others for them, ſhould make Labour by any Manner of Way, directly or indirectly, to your Grace, to obtain your Grace's Favour or Pardon, which was a preſumptuous Intent for any Subject.

Injunctions not to ſue for Pardon for Cauſes in the Star-Chamber, *a very great Preſumption.*

XXXVIII. Alſo

His Oppreſſion of Sir John Stanley Knt.

XXXVIII. Alſo the ſaid Lord Cardinal did call before him Sir *John Stanley* Knt. which had taken a Farm by Covent Seal of the Abbot and Covent of *Cheſter*, nnd afterwards by his Power and Might contrary to Right committed the ſaid Sir *John Stanley* to the Priſon of the *Fleet* by the Space of a Year, unto ſuch Time as he compelled the ſaid Sir *John* to releaſe his Covent Seal to one *Leghe* of *Adlington*, which married one *Lark*'s Daughter, which Woman the ſaid Lord Cardinal kept, and had with her two Children; whereupon the ſaid Sir *John Stanley*, upon Diſpleaſure taken in his Heart, made himſelf Monk in *Weſtminſter*, and there died.

Leghe of Adlington.

The Cardinal kept Lark's Daughter, and had by her two Children.

XXXIX. Alſo on a Time your Grace being at *St. Albans*, according to the ancient Cuſtom uſed within your Verge, your Clerk of the Market doing his Office, did preſent unto your Officers of your moſt honourable Houſhold the Prices of all manner of Victuals within the Precinct of the Verge: And it was commanded by your ſaid Officers to ſet up the ſaid Prices both on the Gates of your honourable Houſhold, and alſo within the Market-place within the Town of *St. Albans*, as of ancient Cuſtom hath been uſed. And the Lord Cardinal hearing the ſame preſumptuouſly, not like a Subject, cauſed the aforeſaid Prices, which were ſealed with your Grace's Seal, accuſtomably uſed for the ſame, to be taken off and pulled down in the ſaid Market-place, where they were ſet up, and in the ſame Place, ſet up his own Prices ſealed with his Seal, and would, if it had been letted, in ſemblable Manner uſed your Seal ſtanding upon your Gates. And alſo would of his preſumptuous Mind have openly ſet in the Stocks within your ſaid Town your Clerk of your Market. By which Preſumption and Uſurpation your Grace may perceive that in his Heart he hath reputed himſelf to be equal with your real Majeſty.

Clerk of the Market.

Prices of Victuals ſet up according to ancient Cuſtom and Uſage ſealed with the King's Seal.

He pulled down and ſet up his own Prices ſealed with his Seal, and would have ſet the Clerk of the Market in the Stocks.

The Cardinal's Hat in the King's Coin of Groats, &c.

XL. Alſo the ſaid Lord Cardinal, of his further pompous and preſumptuous Mind, hath enterprized to join and imprint the Cardinal's Hat under your Arms in your Coin of Groats made at your City of *York*; which like Deed hath not been ſeen to be done by any Subject within your Realm before this Time.

XLI. Alſo where one Sir *Edward Jones*, Clerk, Parſon of *Orewly* in the County of *Bucks*, in the eighteenth Year of your moſt noble Reign, let his ſaid Parſonage, with all Tithes and other Profits of the ſame, to one *William Johnſon*, by Indenture for certain Years; within which Years, the Dean of the ſaid Cardinal's College in *Oxenford* pretended Title to a certain Portion of Tithes within the ſaid Parſonage, ſuppoſing the ſaid Portion to belong to the Parſonage of *Chichley*, which

which was appointed to the Priory of *Tykeford* lately ſuppreſſed, where (of truth) the Parſons of *Orewly* have been peaceably poſſeſſed of the ſaid Portion out of the Time of Mind: Whereupon a *Subpœna* was directed to the ſaid *Johnſon*, to appear before the Lord Cardinal at *Hampton Court*, out of any Term, with an Injunction to ſuffer the ſaid Dean to occupy the ſaid Portion. Whereupon the ſaid *Johnſon* appeared before the ſaid Lord Cardinal at *Hampton Court*, where without any Bill the ſaid Lord Cardinal committed him to the *Fleet*, where he remained by the Space of twelve Weeks, becauſe he would not depart with the ſaid Portion: And at laſt, upon a Recognizance made that he ſhould appear before the ſaid Lord Cardinal, whenſoever he was commanded, he was delivered out of the *Fleet*. Howbeit, as yet the ſaid Portion is ſo kept from him, that he dare not deal with it.

Subpœna directed to Will. Johnſon *to appear before the Cardinal out of any Term.*

Upon his appearing without any Bill, he was committed to the Fleet.

Remained there twelve Weeks; but delivered at laſt upon Recognizance.

XLII. Alſo where one *Martin Decowra* had a Leaſe of the Manor of *Balſall* in the County of *Warwick*, for Term of certain Years, an Injunction came to him out of the *Chancery*, by Writ, upon Pain of one thouſand Pounds, that he ſhould avoid the Poſſeſſion of the ſame Manor, and ſuffer Sir *George Throckmorton* Knight, to take the Profits of the ſame Manor, to the Time the Matter depending in the *Chancery* between the Lord of *St. John's* and the ſaid *Decowra* were diſcuſſed: And yet the ſaid *Decowra* never made Anſwer in the *Chancery*, nor ever was called into the *Chancery* for that Matter, and now of late he hath received a like Injunction, upon pain of two thouſand Pounds; contrary to the Courſe of the Common Law.

Injunction.

XLIII. Alſo whereas in the Parliament Chamber and in open Parliament, Communication and Devices were had and moved, wherein mention was an Incident made of Matters touching Hereſies and erroneous Sects; it was ſpoken and reported by one Biſhop, there being preſent, and confirmed by a good number of the ſame Biſhops, in preſence of all the Lords Spiritual and Temporal then aſſembled, That two of the ſaid Biſhops were minded and deſired to repair into the Univerſity of *Cambridge* for Examination, Reformation, and Correction of ſuch Errors as then ſeemed and were reported to reign amongſt the Students and Scholars of the ſame, as well touching the *Lutheran* Sect and Opinions as otherwiſe. The Lord Cardinal, informed of the good Minds and Intents of the ſaid two Biſhops in that Behalf, expreſsly inhibited and commanded them in no wiſe ſo to do. By means whereof the ſame Errors, as they affirmed, crept more abroad, and took greater Place; ſaying furthermore, that it was not in their Defaults that the ſaid Hereſies were not puniſhed, but in the ſaid Lord Cardinal; and that it was no Reaſon any Blame or Lack ſhould be arrected to them

Hereſies and erroneous Sects reported in Parliament before all the Lords Spiritual and Temporal.

Two Biſhops deſired to go down to Cambridge, *to examine, reform, and correct ſuch Errors,* &c.

The Cardinal expreſsly forbids them ſo to do.

Whereby he became the Disturber of the Correction of Heresies.

for his Offence. Whereby it evidently appeareth, that the said Lord Cardinal, besides all other his heinous Offences, hath been the Impeacher and Disturber of due and direct Correction of Heresies; being highly to the Danger and Peril of the whole Body and good Christian People of this your Realm.

His outrageous Pride and insatiable Avarice.

XLIV. Finally, forasmuch as by the aforesaid Articles is evidently declared to your most real Majesty, that the Lord Cardinal by his outrageous Pride hath greatly shadowed a long Season your Grace's Honour, which is to be most highly regarded; and by his unsatiable Avarice and ravenous Appetite, to have Riches and Treasure without Measure, hath so grievously oppressed your poor Subjects, with so manifold Crafts of Bribery and Extortion, that the Commonwealth of this your Grace's Realm is thereby greatly decayed and impoverished: And also by his Cruelty, Iniquity, Affection, and Partiality, hath subverted the due Course and Order of your Grace's Laws, to the undoing of a great Number of your loving People.

The Lords Prayer to the King, so to deal with the Cardinal, as to make him a terrible Example to all others in time to come, how they offend the Laws of the Kingdom.

Please it your most Royal Majesty therefore, of your excellent Goodness towards the Weal of this your Realm, and Subjects of the same, to set such Order and Direction upon the said Lord Cardinal, as may be to the terrible Example of others to beware so to offend your Grace and your Laws hereafter: And that he be so provided for, that he never have any Power, Jurisdiction, or Authority hereafter to trouble, vex, and impoverish the Common-wealth of this your Realm, as he hath done heretofore, to the great Hurt and Damage of every Man almost, high and low; which for your Grace so doing will daily pray, as their Duty is, to Almighty God, for the prosperous Estate of your most Royal Majesty; long to endure in Honour and good Health, to the Pleasure of God and your Hearts most Desire.

Subscribed the first Day of *December*, the one and twentieth Year of the Reign of our Sovereign Lord King *Henry* the Eighth.

T. Moore,
T. Norfolke,
Charles Suffolke,
Tho. Dorset,
H. Exon,
J. Oxenford,
H. Northumberland,
G. Shrewsbury,
R. Fitz Walter,
T. Rochford,
T. Darcy,
W. Mountjoy,
William Sandys,
William Fitz William,
Henry Guldeford,
John Fitz James,
Anthony Fitz Herbert.

These

These Articles were read in the Commons House, and signed with the Cardinal's Hand, and were confessed by him: And also there was shewed a Writing sealed with his Seal, by the which he gave to the King all his Moveables and Immoveables. Grafton, pag. 1189.

But the Journals of the Commons in King *Henry* the VIIIth's Time, being all lost, as several of those of the Lords also are, we are left in the dark to know what the Proceedings were upon these Articles exhibited to the King against the Cardinal, and afterwards offered to both Houses of Parliament.

OBJECTION.

Indeed my Lord *Hobart* tells us, that there was no Journal Book kept for the Lower House 'till the Time of *Edw.* VI. And the Reason of his Assertion, I conceive, was, because he could not find with the Clerk of that House any such Book in *Henry* the VIIIth's Time. Hobart's Rep: *fol.* 109. *No Journal of the Commons 'till* Edw. VI.

ANSWER.

And if that was his Reason, give me leave then to tell him, That there is no Journal Book now to be found of the Higher House before *Henry* the VIIIth's Reign: And would he have inferred from thence, as a good Argument to prove that there were no Journals kept for that House 'till the Time of *Henry* VIII. *A gross Error to assert so.*

But that which shews my Lord *Hobart* was clearly mistaken in the Antiquity of the Journal of the House of Commons is, that the Statute of the 6th of *Henry* VIII. declares,

That forasmuch as in the End of every Parliament, divers and many great and weighty Matters, as well touching the Pleasure, Weal, and Security of the King, as the Common-weal of the Realm and Subjects, were to be treated, communed of, and by Authority of Parliament to be concluded; so it was, that divers Knights of Shires, Citizens for Cities, and Burgesses for Burroughs, and Barons for the Cinque Ports, long time before the End of the Parliament, of their own Authorities did depart, and go Home into their Countries, whereby the said great and weighty Matters were many time greatly delayed. Pulton's Stat. 6 Hen. VIII. *cap.* 16. *Great and weighty Matters concerning the King and Kingdom to be treated, communed, and considered of in Parliament.*

In Consideration whereof, it was enacted,

1. By the King,
2. The Lords Spiritual and Temporal,
3. And the Commons,

in that Parliament, and by Authority of the same, That from thenceforth none of the said Knights, Citizens, Burgesses, and Barons, nor any of them, that thereafter should be elected or come, or be in any Parliament, should depart from the same Parliament, nor absent himself from the same, 'till the said Parliament should be fully finished, ended,

ended, or prorogued, except he or they ſo departing had Licence of the Speaker and Commons in the ſaid Parliament aſſembled, and the ſame Licence be entered of Record in the Book of the Clerk of the Parliament appointed or to be appointed for the Commons Houſe, upon Pain to every of them ſo departing or abſenting themſelves in any other Manner, to loſe all thoſe Sums of Money, which he or they ſhould or ought to have had for his or their Wages.

And that all the Counties, Cities, and Boroughs, whereof any ſuch Perſon ſhould be elected, and the Inhabitants of the ſame, ſhould be clearly diſcharged of the ſaid Wages againſt the ſaid Perſon and Perſons and their Executors for evermore.

So that to ſay, that there was no Journal Book kept for the Lower Houſe 'till the Time of *Edward* VI. is a groſs Error, if this ſolemn Act of Parliament made in the 6th of *Henry* VIII. who was Father to *Edward* VI. be to be believed. But if not, then I will own that my Lord *Hobart* was in the right.

CHAP. X.

An Apology of the Houſe of Commons, made in the firſt Seſſion of the firſt Parliament of King James *the Firſt, touching their Privileges: Together with ſeveral Notes thereupon.*

KING *James* the Firſt, in his Speech to the Parliament, *Anno regni ſui primo*, declared,*

That it ſhould ever be far from his Royal and ſincere Care and Affection to the Subjects of *England* to alter or innovate the fundamental and ancient Laws, Privileges, and good Cuſtoms of this Kingdom. *King* James's *Promiſe never to alter the fundamental Laws of this Kingdom, &c.*

Whereby not only his Regal Authority, but the People's Security of Lands, Livings, and Privileges (both in general and in particular) are preſerved and maintained; and by the aboliſhing or alteration of which, it is impoſſible but that preſent Confuſion would fall upon the whole State and Frame of this Kingdom. *They being the beſt Security both to King and People.*

It were a Preſumption of too high a Nature to think that his Majeſty's Kingly Reſolutions were not ſeated in the Ark of his ſacred Breaſt, ſince he wiſely foreſaw, that nothing leſs than all this could keep up the Honour and Splendour of the *Engliſh* Crown, either at Home or Abroad.

But in one Thing the Nation may be ſaid to be extreamly unhappy, namely, That (as the ſaid King ingenuouſly confeſſed in his Speech to the Parliament held in the 18th Year of his Reign) he at his firſt coming hither knew not the Laws and Cuſtoms of the Land; but ſaid, that he was led by the old Counſellors he found, which the old Queen left.† *The King led the beginning of his Reign by Queen* Elizabeth's *old Counſellors.*

* *This Speech is inſerted in an Act, authorizing certain Commoners of the Realm of* England *to treat with the Commons of* Scotland, *for the Weal of both Kingdoms.* Raſt. Stat. 1 Jac. I. cap. 2.

† Dr. *Nalſon*'s Collections of the great Affairs of State in King *Charles* the Firſt's Time, *Vol.* I. *Introduction fol* 6, &c. 14.

So that his first Miſtakes and Errors ought to be imputed to them, &c. Miſrepreſenters of what the good old Engliſh *Government was.*

So that whatever Miſtakes and Errors were committed in the Beginning of his Reign, may truly be ſaid (and ought) to be done by thoſe old Counſellors and other new ones that ſucceeded them, who miſrepreſented the good old *Engliſh* Government to that King: And therefore no Fault ought to be imputed to him.

It is true Sir *Edward Phillips* being choſen Speaker of the Houſe of Commons in this King's firſt Parliament, which he called in *England*, acquainted him,

Journal Dom. Com. *The Ark of this Government had ever been ſteered by the Laws thereof.*

That the Ark of Government of this Kingdom had ever been ſteered by the Laws of the ſame, and thoſe diſtributed to the Juriſdiction of ſeveral Courts of Juſtice;

The Commanding and Imperial Court whereof was that of his Majeſty's great and high Court of Parliament, by whoſe Power only,

The Power of a Parliament.

I. New Laws were to be inſtituted,

II. Imperfect Laws reformed,

III. And inconvenient Laws abrogated:

Whoſe Juſtice therein was ſuch and ſo abſolute,

IV. That no ſuch Laws could either be inſtituted, reformed, or abrogated, but,

1. By the Unity of the Commons Agreement,

2. The Lords Accord,

3. And his Majeſty's Royal and Regal Aſſent.

This was a ſafe and happy Method of Government.

Theſe were the *Maxima Vitalia Regni*.

King James *the Firſt's Speech to the Lords and Commons at* Whitehall. 21 March, 1609. *His Works*, fol 527, 531.

But, alas! it was not long before thoſe his old and new Counſellors, turning Flatterers of Prerogative, whom that King juſtly called Vipers and Peſts to their Prince and Commonwealth, laid the Ground-works and Foundations of moſt of the future Diſtempers and woful Miſeries which afterwards fell upon both.

And that this is too true,

Give me leave to inſert here the Apology of the Houſe of Commons, which they made to King *James* in that very Parliament, touching their Privileges.

To the King's moſt Excellent Majeſty: From the Houſe of Commons aſſembled in Parliament.

Moſt gracious Sovereign,

The Apology of the Houſe of Commons touching their Privileges in the firſt Seſſion of Parliament of King James I. Ex Journ. Dom. Com.

WE cannot but with much Joy and Thankfulneſs of Mind acknowledge your Majeſty's great Graciouſneſs, in declaring lately unto us, by the Mouth of our Speaker, That you reſted now ſatisfied with our Doings.

Which Satisfaction notwithſtanding, though moſt deſired and dear unto us, yet proceeding merely from your Majeſty's moſt gracious Diſpoſition, and not from any Juſtification, which on our behalf hath been made; we found this Joy intermingled with no ſmall Grief; and could not, *dread Sovereign*, in our dutiful Love to your Majeſty, and in our ardent Deſire of the Continuance of your Favour towards us, but tender in humble ſort this farther Satisfaction, being careful to ſtand right not only in the Eye of your Majeſty's Grace, but alſo (and that much more) in the Ballance of your Princely Judgment; on which all Aſſuredneſs of Love and Grace is founded. Into which Courſe of Proceedings we have not been raſhly carried by vain Humour of Curioſity, of Contradiction, of Preſumption, or of Love of our own Devices or Doings, unworthy Affections in a Council of Parliament, and more unworthy in Subjects towards their Lord and Sovereign.

The Houſe of Commons great Deſire to ſtand right not only in the Eye of the King's Grace, but in the Ballance of his Judgment.

But, as the Searcher and Judge of all Hearts doth know, for theſe and for no other undue Ends in the World; to increaſe and nouriſh your Majeſty's gracious Affection towards your loyal and moſt loving People, to aſſure and knit all your Subjects Hearts moſt firmly to your Majeſty, to take away all Cauſe of Jealouſy on either Part, and Diffidence for Times enſuing, and to prevent and controll all ſiniſter Reports, which might be unreaſonably ſpread either at home or abroad with Prejudice to your Majeſty, or the good State of your Kingdom.

And to make a firmer Union of Affection and Duty between the King and his Subjects.

To remove Jealouſy on either Hand.

To ſtifle all ſiniſter Reports prejudicial both to King and Kingdom.

With theſe Minds, *dread Sovereign*, your Commons of *England*, repreſented in us their Knights, Citizens and Burgeſſes, do come with this humble Declaration to your Highneſs, and in great Affiance of your moſt gracious Diſpoſition, that your Majeſty, with Benignity of Mind correſpondent to our Dutifulneſs, will be pleaſed to peruſe it.

Therefore come with this humble Declaration.

We know, and with great Thankfulneſs to God acknowledge, that he hath given us a King of ſuch Underſtanding and Wiſdom as is rare to find in any Prince in the World.

Howbeit, ſeeing no human Wiſdom, how great ſoever, can pierce into the Particularities of the Rights and Cuſtoms of People, or of the Sayings

Sayings and Doings of particular Perſons, but by Tract of Experience and faithful Report of ſuch as know them (which it hath pleaſed your Majeſty's princely Mouth to deliver) what Grief, what Anguiſh of Mind hath it been unto us at ſome Time, in Preſence to hear, and ſo in other Things to find and feel by Effect your gracious Majeſty (to the extream Prejudice of all your Subjects of *England*, and in particular of this Houſe of the Commons thereof) ſo greatly wronged by Miſinformation, as well touching the Eſtate of the one as the Privileges of the other, and their ſeveral Proceedings during this Parliament: Which Miſinformations, though apparent in themſelves, and to your Subjects moſt injurious, yet have we in ſome humble and dutiful Reſpect rather hitherto complained of amongſt ourſelves, than preſumed to diſcover and oppoſe againſt your Majeſty;

The Commons declare their Grief, for their having Miſinformations made of them to the King.

Which they had 'till then only complained of amongſt themſelves.

But now, no other Help or Redreſs appearing, and finding thoſe Miſinformations to have been the firſt, yea the chief and almoſt the ſole Cauſe of all the diſcontentful and troubleſome Proceedings ſo much blamed in this Parliament.

And that they might be again the Cauſe of like or greater Diſcontents and Troubles hereafter (which the Almighty Lord forbid) we have been conſtrained, as well in Duty to your Royal Majeſty, whom with faithful Hearts we ſerve, as to our dear native Country, for which we ſerve in this Parliament, to break our Silence, and freely to diſcloſe unto your Majeſty the Truth of ſuch Matters concerning your Subjects the Commons, as hitherto by Miſinformation hath been ſuppreſſed or perverted: Wherein that we may more plainly proceed, (which next unto Truth we affect in this Diſcourſe,) we ſhall reduce theſe Miſinformations to three principal Heads.

But could no longer be ſilent in, without a Breach of Duty both to their King and their dear native Country.

Thoſe Informations reduced to three principal Heads.

First, Touching the Cauſe of the joyful receiving of your Majeſty into this your Kingdom.

1. *Touching their Joy of the King's Acceſſion to the Throne.*

Secondly, Concerning the Rights and Liberties of your Subjects of *England*, and the Privileges of this Houſe.

2. *Concerning the Rights of the Subjects and Privileges of their Houſe.*

Thirdly, Touching the ſeveral Actions and Speeches paſſed in the Houſe, it has been told us to our Faces by ſome of no ſmall Place (and the ſame ſpoken alſo in the Preſence of your Majeſty) that on the 24th of *March* was a Twelvemonth, we ſtood in ſo great Fear that we would have given half we were worth for the Security wherein we now ſtand.

3. *Touching the ſeveral Actions and Speeches of the Houſe.*

Whereby ſome Miſunderſtanders of Things might perhaps conjecture that Fear of our own Miſery had more prevailed with us in the Duty which on that Day was performed, than Love of your Majeſty's Virtues, and Hope of your Goodneſs towards us.

We

We contrarywiſe moſt truly proteſt the contrary, that we ſtood not at that Time, nor of many a Day before, in any Doubt or Fear at all.

The Commons Proteſtation againſt what ſome great Perſons had alledged againſt them to their Faces, and in his Majeſty's Preſence, viz. that Fear more prevailed with them to proclaim him King, than their Duty or Love to his Virtues.

We all profeſſing true Religion by Law eſtabliſhed (being by manifold Degrees the greater, the ſtronger, and more reſpective Part of this your Majeſty's Realm) ſtanding clear in our Conſciences touching your Majeſty's Right, were both reſolute, with our Lives and all other our Abilities to have maintained the ſame againſt all the World, and vigilant alſo in all Parts to have ſuppreſſed ſuch Tumults, as, but in regard of our poor united Minds and Readineſs, by the Male-contented and Turbulent might have been attempted.

But the true Cauſe of their Joy in the Performance of that Duty, ſprang from the extraordinary Love they bore to his Majeſty's Perſon, &c.

But the true Cauſe of our extraordinary great Chearfulneſs and Joy in performing that Day's Duty, was the great and extraordinary Love which we bear towards your Majeſty's moſt royal and renowned Perſon, and a longing Thirſt to enjoy the happy Fruits of your Majeſty's moſt wiſe, religious, juſt, virtuous, and gracious Heart:

Whereof not Rumour, but your Majeſty's own Writings, had given us a ſtrong and undoubted Aſſurance.

And the great Aſſurance they had from his Writings that all Things which tended to the Peace of the Kingdom, would be more firmly eſtabliſhed.

For from hence, *dread Sovereign*, a general Hope was raiſed in the Minds of all your People, that under your Majeſty's Reign Religion, Peace, Juſtice, and all Virtue ſhould renew again and flouriſh.

That the better Sort ſhould be cheriſhed, the bad reformed or repreſſed, and ſome moderate Eaſe ſhould be given us of thoſe Burdens and ſore Oppreſſions, under which the whole Land did groan.

This Hope being ſo generally and ſo firmly ſettled in the Minds of all your moſt loyal and moſt loving People, recounting what great Alienation of Men's Hearts the defeating of great Hopes doth uſually breed, we could not in Duty as well unto your Majeſty as to our Country, Cities, and Boroughs, who hath ſent us hither not ignorant or uninſtructed of their Griefs, of their Deſires, and Hopes, but, according to the ancient Uſe and Liberty of Parliaments, preſent our ſeveral humble Petitions to your Majeſty of different Nature,

The Grounds and Reaſons of making this Apology,

from the ancient Uſe and Liberty of Parliaments.

Some for Right, and ſome for Grace, to the eaſing and relieving of us, of ſome juſt Burdens, and of other ſome unjuſt Oppreſſions, wherein what due Care, and what Reſpect we have had that your Majeſty's Honour and Profit ſhould be enjoyed with the Content and Satisfaction of your People, ſhall afterwards in their ſeveral due Places appear.

* Now concerning the ancient Rights of the Subjects of this Realm, chiefly conſiſting in the Privileges of this Houſe of Parliament,

* *Our ſoveraign Lord, Your humble and true Lieges that been come for the Comens of your Lond, by-ſechin unto your Ritz Wiſſeneſſe, that ſoo as it hath evere be thair Libertie and Freedom that thare ſhould noo Statute, noo Law, made of laſſe than they yaf thereto their Aſſent, conſidering that the Comens of your Land, the which that is and ever hath be a Member of your Parlement, been as well Aſſentirs as Petitioners.* Rot. Parl. 2 Hen. V. pars 2. N°. 16.

The Misinformation openly delivered to your Majesty, hath been in three Things.

The Misinformations were, 1. That the Privileges of Parliament were not held of Right but of Grace. 2. That they were no Court of Record.

First, That we held not Privileges of Right, but of Grace only, renewed every Parliament by way of Donature upon Petition, and so to be limited.

Secondly, That we are no Court of Record, nor yet a Court that can command View of Records, but that our Proceedings here are only to Acts and Memorials, and that the Attendance with the Records is Courtesy, not Duty.

3. That the Examination of the Return of Writs for Members, &c. belongs only to Chancery. *Which Things are to the utter Overthrow of the Fundamental Privileges of the House of Commons.*

Thirdly, And lastly, That the Examination of the Return of Writs for Knights and Burgesses is without our Compass, and due to the *Chancery*; against which Assertions (*most gracious Sovereign*) tending directly and apparently to the utter Overthrow of the very fundamental Privileges of our House, and therein of the Rights and Liberties of the whole Commons of your Realm of *England*,

Which they and their Ancestors from Time immemorable have undoubtedly enjoyed under your Majesty's most noble Progenitors,

We the Knights, Citizens, and Burgesses of the House of Commons assembled in Parliament, and in the Name of the whole Commons of the Realm of *England*, with uniform Consent for ourselves and our Posterity, do expressly protest, as being derogatory in the highest Degree to the true Dignity, Liberty, and Authority of your Majesty's High Court of Parliament, and consequently to the Rights of all your Majesty's said Subjects, and the whole Body of this your Kingdom.

And highly derogatory to the Dignity, Liberty, and Authority of Parliament.

And pray this their Protestation may be recorded.

And desire that this our Protestation may be recorded to all Posterity.

And contrarywise with all humble and due Respect to your Majesty, our sovereign Lord and Head, against those Misinformations we most truly avouch,

First, † That our Privileges and Liberties are our Right and due Inheritance, no less than our very Lands and Goods.

Secondly, ‡ That they cannot be with-held from us, denied, or impared, but with apparent Wrong to the whole State of the Realm.

† *The Commons ever enjoyed these Privileges,*

1. *Of Access to the King,*
2. *Of Freedom of Speech,*
3. *And Freedom from Arrests, in as ample manner as now, though not formerly prayed by the Speaker.* Elsing's Ancient Method of holding of Parliaments, cap. 7. pag. 137.

‡ *The Commons ever enjoyed these Privileges which the Speaker now petitions for, though never desired by any of the ancient Speakers until after the* 7th *of King* Henry VIII.

The Speaker's petition for Freedom of Speech is not recorded before 33 Henry VIII. *made by* Thomas Moyle, *Speaker.* Idem, cap. 7. pag. 138, 139.

Thirdly,

Thirdly, And that our making of Requeſt in the Entrance of Parliament, to enjoy our Privilege, is an Act only of Manners, and doth weaken our Right, no more than our ſuing to the King for our Lands by Petition.

Which Form, though new and more decent than the old by ‖ Precipe, yet the Subject's Right is no leſs new than of old.

Fourthly, We avouch alſo, That our Houſe is a Court of Record, and ſo ever eſteemed.

The Houſe of Commons a Court of Record.

Fifthly, That there is not the higheſt ſtanding Court in this Land that ought to enter into Competency either for Dignity or Authority with this High Court of Parliament, which with your Majeſty's Royal Aſſent gives Laws to other Courts, but from other Courts receives neither Laws nor Orders.

No Court ought to ſtand in Competency with the High Court of Parliament.

Sixthly, And laſtly, We avouch that the Houſe of Commons is the ſole proper Judge of Return of all ſuch Writs, and of the Election of all ſuch Members as belong unto it, without which the Freedom of Election were not entire:

Houſe of Commons the only proper Judges of the Return of all ſuch Writs, and of the Election of their Members.

And that the *Chancery*, though a ſtanding Court under your Majeſty, be to ſend out thoſe Writs, and receive the Returns, and to preſerve them, yet the ſame is done only for the Uſe of the Parliament:

Over which neither the *Chancery*, nor any other Court, ever had, or ought to have, any manner of Juriſdiction.

From theſe miſinformed Poſitions (*moſt gracious Sovereign*) the greateſt Part of our Troubles, Diſtruſts, and Jealouſies have riſen; having apparently found that in the firſt Parliament of the happy Reign of your Majeſty, the Privileges of our Houſe, and therein the Liberties and Stability of the whole Kingdom, have been more univerſally and dangerouſly impugned than ever, (as we ſuppoſe) ſince the Beginnings of Parliaments.

From theſe Miſinformations moſt of the Parliament's Troubles have ariſen.

Beſides that in regard of her * Sex and Age which we had great Cauſe to tender, and much more upon Care to avoid all Trouble which by wicked Practice might have been drawn to impeach the Quiet of your

‖ Fuit dit que en le temps le Roy Henry & devant le Roy fuit empleade come ſerroit autre Home du Peuple, mes Edw. Roy ſon fitz ordeign que home ſueroit vers Roy par petition. *The Year Book, Term Hillary* 22 Edw. III. *fol.* 3, 6.

Wilbye *a Judge ſaid*, Jaye view tiel brief precipe Henry Regi Angliæ &c. en lieu de que eſt ore dun petition pur ſon prerogative. *The Year Book, Term Trin.* 24 Edw. III. *fol.* 55. b.

* *Queen* Elizabeth.

Majeſty's

Majeſty's Right in the Succeſſion, thoſe Actions were then paſſed over, which we hoped in ſucceeding Times of freer Acceſs to your Highneſs of renowned Grace and Juſtice, to redreſs, reſtore, and rectify.

The Miſchiefs by theſe Miſinformations.

Whereas contrarywiſe in this Parliament, which your Majeſty in great Grace (as we nothing doubt) intended to be a Precedent for all Parliaments that ſhould ſucceed, clean contrary to your Majeſty's ſo gracious Deſire,

By reaſon of theſe Miſinformations, not Privileges, but the whole Freedom of the Parliament and Realm have from Time to Time, upon all Occaſions, been mainly hewed at. As

1. *Freedom of Elections hindred.*

Firſt, The Freedom of Perſons in our Election hath been impeached.

2. *Freedom of Speech.*

Secondly, The Freedom of our Speech prejudiced by often Reproofs.

3. *Particular Perſons markt out.*

Thirdly, Particular Perſons noted with Taunt and Diſgrace who have ſpoken their Conſciences in Matters propoſed to the Houſe, but with all due Reſpect and Reverence to your Majeſty.

† Whereby we have been in the End ſubject to ſo extream Contempt, as a Goaler durſt ſo obſtinately withſtand the Decrees of our Houſe.

Some of the higher Clergy to write a Book againſt us, even ſitting the Parliament.

Perſons preſuming to print and preach againſt the Rights of Parliament.

The inferior Clergy to inveigh againſt us in Pulpits, yea to publiſh their Proteſtations, tending to the Impeachment of our moſt ancient and undoubted Rights in treating of Matters for the Peace and good Order of the Church.

What Cauſe we your poor Commons have to watch over our Privileges, is manifeſt in itſelf to all Men.

Prerogatives encreaſe, the Subjects Privileges at a Stand.

The Prerogatives of Princes may eaſily, and do daily grow.

The Privileges of the Subject are for the moſt Part at an everlaſting ſtand.

They may be by good Providence and Care preſerved, but being once loſt are not recovered but with much Diſquiet.

† *We be informed by our Judges, that We at no Time ſtand ſo highly in our Eſtate Royal as in the Time of Parliament, wherein we as Head, and you as Members, are conjoined and knit together in one Body Politick, ſo as whatſoever Offence or Injury (during that Time) is offered to the meaneſt Member of that Houſe, is to be adjudged as done againſt our Perſon, and the whole Court of Parliament.* King *Henry* the Eighth's Speech to the Commons in the Parliament 34 of his Reign, in *George Ferrer's* Caſe. Crompton's Juriſdiction of Courts, pag. 10.

If

If good Kings were immortal as well as Kingdoms, to ſtrive ſo for Privilege were but Vanity perhaps and Folly; but ſeeing the ſame God who in his great Mercy hath given us a wiſe King and religious, doth alſo ſometimes permit Hypocrites and Tyrants in his Diſpleaſure, and for the Sins of the People,

No need of Privileges, &c. if good Kings were as immortal as Kingdoms.

From hence hath the Deſire of Rights, Liberties, and Privileges, both for Nobles and Commons, had its juſt Original;

By which an harmonical and ſtable State is framed,

Each Member under the Head enjoying that Right, and performing that Duty, which, for the Honour of the Head and Happineſs of the whole is requiſite.

Thus much touching the Wrong done to your Majeſty by Miſinformation touching our Privileges.

The laſt Kind of Miſinformation made to your Majeſty, hath been touching the Actions and Speeches of particular Perſons uſed in the Houſe.

Which Imputation notwithſtanding, ſeeing it reacheth the whole Houſe in general, who neither ought, neither have at any Time ſuffered any Speech touching your Majeſty, other than reſpective, dutiful, and as become loyal Subjects of a King ſo gracious;

The Speeches of particular Members concern the whole Houſe.

And foraſmuch as it is very clear unto us by the Effect, that divers Things ſpoken in the Houſe, have been perverted and very untruly reported to your Majeſty,

If it might ſeem ſo fit in your Majeſty's Wiſdom, and were ſeemingly for us to crave, we ſhould be moſt glad, if, for our better Juſtification, and for your further Satisfaction, which we principally deſire, the Accuſers and the Accuſed might be confronted.

The Accuſer and Accuſed ought to be confronted.

And now (*moſt gracious Sovereign*) theſe neceſſary Grounds of our Cauſes and Defences being truly laid, and preſented ſincerely to your Majeſty's Grace and Wiſdom, the Juſtification of ſuch Particulars, wherein your Highneſs ſeemed doubtful of our dutiful Carriage (tho' not ſo much for the Matter, as for the Manner of our Proceedings) we truſt will be plain; and to expedite which Particulars, we find them to have been of three different Natures.

The Commons Juſtification of themſelves, as to Particulars, ſtated.

Being of three Sorts.

The *Firſt* Sort concerning the Dignity and Privileges of our Houſe.

The *Second*, the good Eſtate of the Realm and Church.

The *Third*, was for Eaſe of certain Grievances and Oppreſſions.

In the *Firſt* Rank there were Five Particulars.

1. The Matter of the Gentleman Uſher.

The firſt ſubdivided into five Parts.

2. Of the Yeomen of the Guard.
3. Of the Election of the Knights of *Buckinghamſhire*.
4. Of Sir *Thomas Shirley*'s Deliverance.
5. And of the Biſhop of *Briſtow*'s Pamphlet.

The ſecond into two Parts.

The *Second* Head had two Particulars,

The Union and Matters of Religion.

The third into three.

The *Third* Head had three,

The Bill * of Aſſarts, and Matter of Purveyors, and the Petition for Wardſhips.

Of each of theſe we muſt ſay ſomewhat to give your Majeſty Satisfaction, and that with all Brevity, to ſhun Tediouſneſs and Trouble.

The Gentleman Uſher's Miſbehaviour to the Commons.

The Gentleman Uſher's Fault in depriving, by his unaccuſtomed Neglect, a great Part of our Houſe from hearing your Majeſty's Speech the firſt Day of Parliament, we could not, in the Grief of being fruſtrate of our ſo longing and juſt Deſire to hear your Majeſty's Voice and renowned Wiſdom, but complain of in decent Sort among ourſelves,

And further we proceeded not.

Your Majeſty's extraordinary great Grace and Favour in rehearſing the Day enſuing your former admirable Speech, did give us Content, with abundance of Increaſe of Joy.

The Yeomen of the Guard's Miſbehaviour to the Commons.

The Yeomen of the Guard's † Words were very opprobious, and howſoever they might have been not unfitly applied to the Peaſants of *France*, or Boores of *Germany*;

Yet could they not be other than very reproachful and injurious to the great Dignities and Honour of the Commons of this Realm, who contain not only the Citizens, Burgeſſes, and Yeomanry, but alſo the whole inferior Nobility of the Kingdom, Knights, Eſquires, and Gentlemen, many of which are come immediately out of the moſt Noble Families, and ſome other of their Worth advanced to the high Honour of your Mrjeſty's Privy Council, and otherwiſe have been imployed in very honourable Service.

The great Quality of the Commons, and Advantages by them to the Crown.

In Sum, the ſole Perſons of the higher Nobility excepted, they contain the whole Power and Flower of your Kingdom.

Firſt, With their Bodies your Wars,

Secondly, With their Purſes your Treaſures are upheld and ſupplied.

* Aſſart *(as it is here properly to be underſtood) ſignifies where the Subject within the Limits and Bounds of the King's Foreſts ſtubs the Ground, making it fit for Tillage, without the King's Licence.*

† Brian Taſh, *the Yeoman of the Guard, keeping one of the Doors of the Upper Houſe, repulſed ſeveral Members of the Lower Houſe, and ſhut the Door upon them, with theſe uncivil and contemptible Terms,* Goodmen Burgeſſes, you come not here. Journ. Dom. Com.

Thirdly,

Thirdly, Their Hearts are the Strength and Stability of your Royal Seat.

All theſe, amounting to many Millions of People, are repreſentatively preſent in us of the Houſe of Commons.

The Wrong done to us doth redound upon the whole Land, and will be ſo conſtrued.

We could not therefore do leſs in our Duties to the Realm, than to advertiſe ſuch a Delinquent of the Unſeemlineſs of his Fault, neither could we yet do more in Duty to your Majeſty, than upon his Acknowledgment thereof ſo freely to remit it.

The Rights of the Liberties of the Commons of *England* conſiſteth chiefly in theſe three Things. *The Rights of the Commons conſiſt chiefly in three Things.*

Firſt, ‡ That the Shires, Cities, and Boroughs of *England*, by Repreſentation to be preſent, have free Choice of ſuch Perſons as they ſhall put in Truſt to repreſent them.

Secondly, That the Perſons choſen during the Time of the Parliament, as alſo of their Acceſs and Receſs, be free from Reſtraint, Arreſt, and Impriſonment.

Thirdly, That in Parliament they may ſpeak freely their Conſciences without Check and Controulment, doing the ſame with due Reverence to the Sovereign Court of Parliament, that is to your Majeſty and both the Houſes, who all in this Caſe make but one Politick Body, whereof your Highneſs is the Head.

Theſe three ſeveral Branches of the ancient Inheritance of our Liberty, were in three Matters enſuing apparently injured. *The Commons injured in each of them in three Matters.*

The Freedom of Election in the Caſe of Sir *Francis Godwin*. *Freedom of Election.*

The Freedom of the Perſons elected in Sir *Thomas Shirley*'s Impriſonment. *Freedom of Perſons elected.*

The Freedom of our Speech, as by divers other Reproofs, ſo alſo in ſome Sort by the Biſhop of *Briſtow*'s Invective. *Freedom of Speech.*

For the Matter of Sir *Francis Goodwin*, the Knight choſen for *Buckinghamſhire*, we were and ſtill are of a clear Opinion, that the Freedom of Election was in that Action extreamly injured; that by the ſame Right it might be at all Times in a Lord Chancellor's Power *The Election in* Buckinghamſhire.

‡ *And becauſe Elections ought to be free, the King commandeth upon great Forfeiture, that no Man by Force and Arms, nor by Malice or Menaceing, ſhall diſturb any to make free Elections.* Pulton's Stat. 3 Edw. I. cap. 5. *made* Ann. Dom. 1275. Coke's 2d Inſt. fol. 168.

to

to reverſe, defeat, to evert and ſubſtitute all the Elections, and Perſons elected, over all the Realm.

Neither thought we that the || Judges Opinion, which yet in due Place we greatly reverence, being delivered what the Common Law was, which extends only to inferior and ſtanding Courts, ought to bring any Prejudice to this High Court of Parliament, whoſe Power being above the Law is not founded on the Common Law, but have their Rights and Privileges peculiar to themſelves.

The Commons Defence for iſſuing a Writ out of Chaucery *in the King's Name without his Notice.*

For the manner of our Proceeding, which your Majeſty ſeemed to blame, in that the ſecond Writ going out in your Majeſty's Name, we preſumed to cenſure it without firſt craving Acceſs to acquaint your Highneſs with our Reaſons therein, we truſt our Defence ſhall appear juſt and reaſonable.

It is the Form of the Court of *Chancery*, as of divers other Courts, that Writs going out in your Majeſty's Name, are returned alſo as to your Majeſty, in that Court from whence they iſſue;

Howbeit therefore, no Man ever repaireth to your Majeſty's Perſon, but proceeds according to Law, notwithſtanding the Writ.

This being the univerſal Cuſtom of this Kingdom, it was not, nor could be admitted into our Conceits, that the Difference was between your Majeſty and Us (for God forbid that between ſo gracious a Sovereign, and ſo dutiful and loving Subjects, any Difference ſhould ariſe;)

But it always was and ſtill is conceived, that the Controverſy was between the Court of *Chancery* and our Court, an uſual Controverſy between Courts about their Pre-eminences and Privileges:

The Commons, and not the Chancery, *to judge the Return of the Writ.*

And that the Queſtion was, Whether the *Chancery*, or our Houſe of the Commons, were Judge of the Members returned for it.

Wherein though we ſuppoſed the Wrong done to be moſt apparent, and extreamly prejudicial for the Rights and Liberties of this Realm,

Their Readineſs to comply with the King's Propoſal.

Yet ſuch and ſo great was our Willingneſs to pleaſe your Majeſty, as to yield to a middle Courſe propoſed by your Highneſs, preſerving only our Privileges by voluntary Ceſſions of the lawful Right.

And this Courſe, as it were, of deceiving of ourſelves, and yielding in our apparent Right (whereſoever we could but invent ſuch Ways of Eſcape as that the Precedent might not be hurtful, we have held, *dread Sovereign*, more than once this Parliament, upon Deſire to avoid that, which in your Majeſty by Miſinformation, whereof we

|| *In the memorable Caſe of* Thorp, *which happened* 31 Henry VI. *the Judges being aſked their Opinions by the Lords, anſwered in theſe Words:* It hath not been uſed before Time, nor becomes it us to determine Matters concerning the High Court of Parliament, which is ſo high and mighty in its Nature, that it is Judge of the Law, and makes that to be Law which is not Law, and that to be no Law which is; and the Determination of its Privileges belongs to the Lords in Parliament, and not to the Juſtices. *Rot. Parl.* 31 *Hen.* VI. N°. 25, 26, &c.

have had Cauſe always to ſtand in Doubt, might be diſtaſteful or not approveable: So dear hath your Majeſty's gracious Favour been unto us.

In the Delivery of Sir *Thomas Shirley*, our Proceedings were long; our Defence of them ſhall be brief.

* We had to do with a Man, the Warden of the *Fleet*, ſo intractable, and of ſo reſolved Obſtinacy, as that nothing we could do, no not your Majeſty's Royal Word for Confirmation thereof, could ſatisfy him for his own Security.

The Caſe between the Warden of the Fleet *and the Commons.*

This was the Cauſe of the Length of that Buſineſs: Our Privileges were ſo ſhaken before, and ſo extremely vilified, as that we held it not fit in ſo unreaſonable a Time, and againſt ſo mean a Subject, to ſeek our Right by any other Courſe of Law, or by any Strength than by our own.

Concerning the Biſhop of Briſtol's *Book.*

The Biſhop of *Briſtow*'s Book was injurious and grievous to us, being written expreſsly with Contempt of the Parliament, and of both the Houſes in the higheſt Degree; undertaking to deface the Reaſons propoſed by the Commons, approved by the honourable Lords, confirmed by the Judges, and finally by your Royal Majeſty not diſaſſented to.

And to increaſe the Wrong, with ſtrange Untruths he had perverted thoſe Reaſons in their main Drift and Scope, pretending that they were deviſed to impugn the Union itſelf.

Whereas both by their Title and by themſelves it was clear and evident, that they were only uſed againſt Alteration of Name, and that not ſimply, but before the Union of both Realms in Subſtance were perfected.

† This Book being thus written and publiſhed to the World, con-

* *In the Parliament* 34 Hen. VIII. *becauſe the Serjeants of the* Compter *made a Fray upon the Serjeant of the* Mace, *ſent from the Commons Houſe for* George Ferrers *their Member, then lately arreſted. And for that the Sheriff rejected the Complaint of the Fray and the Meſſage contemptuouſly: The Houſe,*

1. *Committed the Sheriff to the* Tower;
2. *The Clerk, which was the Occaſion of the Fray, to a Place called* Little Eaſe;
3. *And the Officers to* Newgate.

Compton's Juriſdiction of Courts, *pag.* 8. b.

† *The Lords for yielding Satisfaction unto the Lower Houſe concerning the Biſhop's Book, did all agree in Opinion, that the ſame might beſt be done if he would voluntarily acknowledge himſelf to have committed an Error in that Behalf, and to be ſorry for it; which in the End he did in theſe Words following*; viz.

1. I confeſs I have erred, in preſuming to deliver a private Sentence in a Matter ſo dealt in by the High Court of Parliament.
2. I am ſorry for it.
3. If it were to do again, I would not do it.
4. But I proteſt it was done of Ignorance, and not of Malice towards either of the Houſes of Parliament, or any particular Member; but only to declare my Affection to the intended Union, which I doubt not but all your Lordſhips do allow of.

Journ. Dom. Procerum, 5 Jun. an. 1 *Jac.* I.

taining moreover ſundry ſlanderous Paſſages, and tending to Murmurs, Diſtraction, and Sedition;

We could not do leſs againſt the Writer thereof, than to complain of the Injury to the Lords of the Higher Houſe, whereof he had now attained to be a Member.

Theſe Wrongs were to the Dignity of our Houſe and Privileges.

Concerning the Cauſes belonging to State and Church.

Touching the Cauſes appertaining to State and Church, true it is, we were long in treating and debating the Matter of Union.

The Propoſitions were new;

The Importance great;

The Conſequence far reaching, and not diſcoverable but by long Diſputes: Our Numbers alſo as large; and each hath Liberty to ſpeak.

But the Doubts and Difficulties once cleared or removed, how far we are from oppoſing to the juſt Deſires of your Majeſty, as ſome evil diſpoſed Minds would perhaps inſinuate, who live by Diviſion, and proſper by Diſgrace of other Men, the great Expedition, Alacrity, and Unanimity, which was uſed and ſhewed in paſſing the Bill, may ſufficiently teſtify.

Concerning Matters of Religion.

* For Matter of Religion, it will appear by Examination of Truth and Right, that your Majeſty ſhould be miſinformed, If any Man ſhould deliver, that the Kings of *England* have any abſolute Power in themſelves, either to alter Religion (which God defend ſhould be in the Power of any mortal Man whatſoever), or to make any Laws concerning the ſame, otherwiſe than as in Temporal Cauſes, by Conſent of Parliament.

† We have and ſhall at all Times by our Oaths acknowledge, That your Majeſty is Sovereign Lord and Supreme Governour in both.

Touching our own Deſires and Proceedings therein, they have not been a little miſconceived and miſreported.

With what Temper and Spirit the Commons came to Parliament.

We have not come in any *Puritan* or *Browniſh* Spirit, to introduce their Party, or to work the Subverſion of the State Eccleſiaſtical, as now it ſtandeth;

Things ſo far and ſo clearly from our Meaning, as that with uniform Conſent in the Beginning of this Parliament we committed to

* *See*, 1. *The Statute of* Magna Charta.
2. *The Statutes of* Proviſors, 25, 38 Ed. III. 16 Rich. II.
3. *The Statutes of* 24 Hen. VIII. cap. 12. 25 Hen. VIII. cap. 21. 27 Hen. VIII. cap. 15. 28 Hen. VIII. cap. 16.

† Dialogus de Fundamentis Legum Angliæ, & de Conſcientia, per Chriſtopherum de Sancto Germano, *cap.* 10. *pag.* 34. Sextum fundamentum legis Angliæ ſtat in diverſis Statutis per Dominum Regem & progenitores ſuos, & per Dominos Spirituales & Temporales, & per Communitatem totius regni in Parliamentis editis, ubi lex rationis, lex divina, conſuetudines maxima ſive alia fundamenta legis Angliæ prius ſufficere minime videbantur.

the

the *Tower* a Man, who out of that Humour, in a Petition exhibited to our Houſe, had ſlandered the Biſhops.

But according to the Tenour of your Majeſty's Writ of Summons directed to the Counties from whence we came, and according to the ancient and long continued Uſe of Parliaments, as by many Records from Time to Time appeareth, we come with another Spirit, even with the Spirit of Peace.

There was no Diſpute of Matters of Faith; But how to extinguiſh Diſſenſions amongſt the Miniſters;

We diſputed not of Matters of Faith and Doctrine, our Deſire was Peace only, and our Device of Unity how this lamentable and long laſting Diſſenſion amongſt the Miniſters, from which both Atheiſm, Sects, and all ill Life, have received ſuch Encouragement and ſo dangerous Increaſe, might at length, before Help come too late, be extinguiſhed.

And to eſtabliſh Peace in the Church by the beſt Ways.

And for the Ways of this Peace, we are not all addicted to our own Inventions, but ready to embrace any fit Way that may be offered; neither deſire we ſo much, that any Man in regard of Weakneſs of Conſcience may be exempted after Parliament from Obedience unto Laws eſtabliſhed, as that in this Parliament ſuch Laws may be enacted, as by the Relinquiſhment of ſome few Ceremonies of ſmall Importance, or by any Way better, a perpetual Uniformity may be enjoined and obſerved.

Our Deſire hath alſo been, to reform certain Abuſes crept into the Eccleſiaſtical State, even as into the Temporal.

And laſtly, that the Land might be furniſhed with a learned, religious, and godly Miniſtry:

For the Maintenance of whom we would have granted no ſmall Contributions, if in theſe, as we truſt juſt and religious Deſires, we had found that Correſpondency from others which was expected.

Theſe Minds and Hearts we in ſecret preſent to that Sovereign Lord who gave them, and in publick profeſs to your gracious Majeſty, who we truſt will ſo eſteem them.

The Commons Defence as to Matters of Oppreſſion or Grievance in the Bill of Aſſarts.

There remains the Matters of Oppreſſion or Grievance in the Bill of Aſſarts.

Your Majeſty's Council was heard, namely, your Sollicitor and Sir *Francis Bacon.*

It was alſo deſired by the Houſe, That other of your Council would have been preſent.

We knew that our paſſing the Bill could not bind your Majeſty: Howbeit, for ſundry equitable Conſiderations (as to us they ſeemed) we thought good to give ſo much Paſſage to the Biil, in Hope your Majeſty might either be pleaſed to remit in ſome ſort unto this Equity that Right, which the Rigour of Law had given, or otherwiſe intreated by this Kind of Sollicitation, to let them fall into your Majeſty's

jeſty's Hands full of Piety and Mercy, and not into the Jaws of devouring Promoters.

And this do we underſtand to be your gracious Intent, wherewith we reſt joyfully content, and ſatisfied.

The Grievance was not unjuſt in Rigour of Law, and was particular.

As to Cart-takers and Purveyors.

But a general, extreme, unjuſt, and crying Oppreſſion is in Cart-takers and Purveyers, who have rummaged and ranſacked ſince your Majeſty's coming in, far more than under any of your Royal Progenitors: There hath been no Prince ſince *Henry* III. except Queen *Elizabeth*, who hath not made ſome one Law or other, to repreſs or limit them. They have no Preſcription, no Cuſtom to plead.

All Parliaments have complained of them.

For there hath not been any Parliament, wherein Complaint hath not been made, and Claim of our Rights, which doth interrupt Preſcription.

* We have not in this preſent Parliament ſought any thing againſt them, but Execution of thoſe Laws, which are in Force already.

We demand but that Juſtice, which our Princes are ſworn neither to deny, delay, nor ſell.

That we ſought into the Accounts of your Majeſty's Expence, was not our Preſumption, but upon Motion from the Lords of your Majeſty's Council, and after from your Officers of your Highneſs's Houſhold, and that upon a Demand of a perpetual yearly Revenue, in lieu of the taking away of thoſe Oppreſſions; unto which Compoſition neither know we well how to yield, being only for Juſtice and due Right, which is unſaleable:

Juſtice and due Right unſaleable.

† Neither yet durſt we impoſe it by Law upon the People, without firſt acquainting them, and having their Conſents unto it.

* *Our Sovereign Lord the King, at his Parliament holden at* Weſtminſter *in the Term of St.* Hillary, *the* 38th *Year of his Reign, having Regard to the Quietneſs of his People, which he chiefly deſireth to ſuſtain in Tranquillity and Peace, to govern according to the Laws, Uſages, and Franchiſes of this Land, as he is bound by his Oath made at his Coronation, following the Ways of his Progenitors, which for their Times made certain good Ordinances and Proviſions againſt the ſaid Grievances and Perils* [*of Proviſions from* Rome] *which Ordinances and Proviſions, and all the other made in his Time, and eſpecially in the* 25th *and* 28th *Year of his Reign, our Sovereign Lord the King, by the Aſſent and expreſs Will and Concord,*

1. *Of the Dukes, Earls, Barons;*
2. *And Commons of this Realm;*
3. *And of all other whom theſe Things toucheth;*

By good and mature Deliberation and Adviſement, hath approved, accepted and confirmed, &c. Raſtal's Statutes; *the Statute of* Proviſors, *made* 38 Edw. III. cap. 1.

† *The Lords having granted to the King the tenth Sheaf of all the Corn of their Demeſnes, except of of their Bond Tenants, the tenth Fleece of Wooll, and the tenth Lamb of their own Store, to be paid in two Years; The Commons made Anſwer, That they knew and tendered the King's Eſtate, and were ready to aid the ſame,* mes pur ceo quil coment que laide ſoit grante en ce cas ils nolerent aſſentir tant quils euſſent conſeillez & adviſez avec les Communes de lour pais, *They durſt not agree, without farther Conference with their Countries.* Rot. Parl. 13 Edw. III. No. 5, 8.

But

But if your Majeſty might be pleaſed, in your gracious Favour, to treat of Compoſition with us for ſome Grievance, which is by Law and juſt; How ready we ſhould be to take that Occaſion and Colour to ſupply your Majeſty's Deſire, concerning theſe alſo, which we hold for unjuſt, ſhould appear, we nothing doubt, to your Majeſty's full Satisfaction.

The Matter of Wards.

And therefore we come, laſtly, to the Matter of Wards, and ſuch other Burthens (for ſo we acknowledge them) as to the Tenures of *Capite* and *Knights Service* are incident. We cannot forget (for how were it poſſible?) how your Majeſty, in a former moſt gracious Speech in your Gallery at *Whitehall*, adviſed us for unjuſt Burthens to proceed againſt them by Bill: But for ſuch as were juſt, if we deſired any Eaſe, that we ſhould come to yourſelf, by way of Petition, with Tender of ſuch countervailable Compoſition in Profit, as for the ſupporting of your Royal Eſtate was requiſite. According unto which your Majeſty's moſt favourable Grant and Direction, we prepared a Petition to your moſt excellent Majeſty, for Leave to treat with your Highneſs touching a perpetual Compoſition, to be raiſed by yearly Revenue out of the Lands of your Subjects, for Wardſhips and other Burthens depending upon them, or ſpringing with them; wherein we firſt entered into this dutiful Conſideration, That this Prerogative of the Crown, which we deſire to compound for, was Matter of mere Profit, and not of any Honour at all or princely Dignity. For it could not then, neither yet can by any means, ſink into our Underſtandings, that theſe œconomical Matters of Education and Marrying of Children, which are common alſo to Subjects, ſhould bring any Renown or Reputation to a potent Monarch, whoſe Honour is ſettled on a higher and ſtronger Foundation. Faithful and loving Subjects, valiant Soldiers, and honourable Nobility, wiſe Counſellors, a learned and religious Clergy, and a contented and a happy People, are the true Honour of a King: And contrarywiſe, that it would be an exceeding great Honour, and of memorable Renown to your Majeſty with all Poſterity, and in preſent an aſſured Bond of the Hearts of all your People, to remit unto them this Burthen, under which our Children are born.

Unjuſt Burthens to be proceeded againſt by Bill; others that were juſt, but uneaſy, by way of Petition.

The Commons Petition to treat with the King for a perpetual Compoſition, by yearly Revenue out of the Subjects Lands, in lieu of Wardſhips and other Burthens.

What is the true Honour of a King.

The great Grievance and Miſchief of Wardſhips.

This Prerogative then appearing to be a mere Matter of great Profit, we entered into a ſecond Degree of Conſideration, With how great Grievance and Damage of the Subject, to the Decay of many Houſes, and diſabling of them to ſerve their Prince and Country; with how great Miſchief alſo, by occaſion of many forced and ill ſuited Marriages; and laſtly, with how great Contempt and Reproach of our Nation in Foreign Countries; how ſmall a Commodity now was raiſed to the Crown in reſpect of that, which with great Love and Joy and Thankfulneſs, for the Reſtitution of this Original Right in diſpoſing

of our Children, we would be content and glad to aſſure unto your Majeſty.

The Original of Wardſhips, what.

We fell alſo from hence into a third Degree of Conſideration, That it might be, that in regard that the Original of theſe Wardſhips was, ſerving of the King in his Wars againſt *Scotland*, which Cauſe we hope now to be at an everlaſting End;

The whole Kingdom's Hope of being then for ever eaſed of the Burthen of it.

And in regard moreover of that general Hope, which at your Majeſty's firſt Entry by the whole Land was embraced (a Thing known unto all Men) that they ſhould be now for ever eaſed of this Burthen;

Your Majeſty, out of your moſt noble and gracious Diſpoſition and Deſire to overcome our Expectation with your Goodneſs, may be pleaſed to accept the Offer of a perpetual and certain Revenue, not only proportionable to the uttermoſt Benefit that any of your Progenitors ever reaped thereby, but alſo with ſuch an Overplus and large Addition, as in great part to ſupply your Majeſty's other Occaſions, that our Eaſe might breed you Plenty with their humble Minds.

With theſe dutiful Reſpects, we intended to crave Acceſs unto your Majeſty.

Miſinformations given touching what the Commons Houſe ſaid of this Burthen.

But that ever it was ſaid in our Houſe by any Man, That it was a Slavery under your Majeſty more than under our former Princes, hath come from an untrue and calumnious Report. Our Sayings have always been, That this Burthen was juſt, That the remitting thereof muſt come from your Majeſty's Grace, and that the denying our Suit was no Wrong.

This Apology hath truly repreſented the State of their Houſe.

And thus, moſt gracious Sovereign, with dutiful Minds and ſincere Hearts towards your Majeſty, have we truly diſcloſed our ſecret Intents, and delivered our outward Actions in all theſe ſo much traduced and blamed Matters;

And from hence forward ſhall remain in great Affiance, that your Majeſty reſteth ſatisfied, both in your Grace and in your Judgment, which above all worldly Things we deſire to effect, before the diſſolving of this Parliament, where in ſo long Time, with ſo much Pains and Endurance of ſo great Sorrow, ſcarce any thing hath been done for their Good and Content, who ſent us hither; and whom we left full of Hope and joyful Expectation.

And how little hath been done for the Good and Content of thoſe who ſent them.

There remaineth, *dread Sovereign*, yet one Part of our Duty at this preſent, which Faithfulneſs of Heart, not Preſumption doth preſs: We ſtand not in Place to ſpeak or do Things pleaſing.

What is the Care of the Commons to deſerve well both of King and Subject.

Our Care is, and muſt be, to confirm the Love, and tye the Hearts of your Subjects, the Commons, moſt firmly to your Majeſty.

Herein lieth the Means of our well deſerving of both:

There

There was never Prince entered with greater Love, with greater Joy and Applauſe of all his People.

This Love, this Joy, let it flouriſh in their Hearts for ever.

Let no Suſpicion have Acceſs to their fearful Thoughts, that their Privileges, which they think by your Majeſty ſhould be protected, ſhould now by ſiniſter Informations or Counſel be violated or impaired: *

Or that thoſe, which with dutiful Reſpects to your Majeſty ſpeak freely for the Right and Good of their Country, ſhall be oppreſſed or diſgraced.

The Commons in Parliament to give publick Information of the State of the Government to the King.

Let your Majeſty be pleaſed to receive publick Information from your Commons in Parliament, as to the Civil Eſtate and Government; for private Informations paſs often by Practice: The Voice of the People, in the Things of their Knowledge, is ſaid to be as the Voice of God.

The Commons Requeſt to the King to conſider their Petition for the Eaſe of thoſe Burthens, under which the Kingdom had long mourned.

And if your Majeſty ſhall vouchſafe, at your beſt Pleaſure and Leiſure, to enter into your gracious Conſideration of our Petition for the Eaſe of theſe Burthens, under which your whole People have of long time mourned, hoping for Relief by your Majeſty; then may you be aſſured to be poſſeſſed of their Hearts; and, if of their Hearts, of all they can do or have.

With the Aſſurance of their Loyalty to him and his Royal Iſſue for ever.

And ſo we, your Majeſty's moſt humble and loyal Subjects, whoſe Anceſtors have with great Loyalty, Readineſs, and Joyfulneſs, ſerved your famous Progenitors, Kings and Queens of this Realm, ſhall with like Loyalty and Joy, both we and our Poſterity, ſerve your Majeſty and your moſt Royal Iſſue for ever, with our Lives, Lands, and Goods, and all other our Abilities:

And by all Means endeavour to procure your Majeſty Honour, with all Plenty, Tranquillity, Content, Joy and Felicity."

Hinc Dolor, ſed unde Medicina?

The Integrity of this Apology juſtified.

But farther to juſtify the Integrity of this Apology in the general, I think it will be ſeaſonable and uſeful to cloſe it with the Statute of 2 *Henry* IV. which follows.

Raſtal's Stat. 2 Hen. IV. c. 1.

Firſt, That Holy Church have her Rights and Liberties: And that all the Lords Spiritual and Temporal, and all the Cities, Boroughs,

* *The Commons did oftentimes under* Edward III. *diſcuſs and debate among themſelves many Things concerning the King's Prerogative; and agreed upon Petitions for Laws to be made directly againſt his Prerogative; as may appear by divers of the ſaid Petitions. Yet they were never interrupted in their Conſultations, nor received Check for the ſame; as may appear alſo by the Anſwers to the ſaid Petitions. Thoſe Precedents of* Edward III. *are the beſt, he being the right Heir to the Crown, abſolute in his Government, and well beloved of his People, and may be freely cited.* Elſyng, cap. 7. pag. 129.

and

What was the ancient Government of England.

and Towns enfranchiſed, have and enjoy all their Liberties and Franchiſes, which they have duly uſed, and which they have of the Grant of his noble Progenitors and Predeceſſors Kings of *England*.

Secondly, And that the Great Charter, and the Charter of the Foreſt, and all other good Ordinances and Statutes made in his Time, and in the Time of his noble Progenitors not repealed, be firmly holden and kept in all Points.

Thirdly, And that all his Liege People and Subjects may freely and peaceably, in his ſure and ſafe Protection, go and come to his Courts to purſue the Laws, or defend the ſame without Diſturbance or Impediment of any.

Fourthly, And that full Juſtice and Right be done as well to the Poor as the Rich, in his Courts aforeſaid.

Here we have the Evidence of the whole Kingdom clearly and fully delivered, What was the ancient Government of *England* before this declarative Law was made.

Jus Parliamentarium.

PART II.

A ſhort Hiſtory or Series of the Invaſions upon the Privileges of Parliaments, as to Freedom of Speech for the Redreſs of Grievances. Firſt, *begun in the Reign of* RICHARD II. Secondly, *revived by Queen* ELIZABETH. Thirdly, *continued and improved in the Reign of King* JAMES I. *And,* Fourthly, *compleated in that of King* CHARLES I. *by the bold Reſolutions of the Judges of the* King's Bench; *which was one main and principal Cauſe of thoſe direful Calamities, which afterwards fell both upon King and Kingdom.*

BEFORE we come to make out the Truth of this Propoſition, it will be neceſſary to enquire into the Practice of preceeding Times, touching the Right of the Commons to treat and debate in Parliament, *ſuper diverſis negotiis Regem & Statum Regni ſpecialiter tangentibus*; that ſo the Reader may be the better ſatisfied in this weighty Point.

I will proceed by theſe Steps from the Writs *de expenſis Militum & Burgenſium, qui venerunt ad Parliamenta.*

Rot. Clauſ. 28 Ed. I. m. 3. dorſ. De Militibus, Civibus, & Burgenſibus mittentibus ad Parliamentum Regis.

I. It appears, That in a Parliament held 28 *Edw.* III. they were called, *Nobiſcum* [i. e. *Rege*] *ſuper diverſis negotiis, Nos & Populum regni noſtri ſpecialiter tangentibus, tractaturi.*

II. And the Writs of Expences run in the ſame Form (after the Parliaments were ended) as may be ſeen in thoſe Clauſes

Clauſ. 29 Ed. I. m. 17. dorſ.
Clauſ. 33 Ed. I. m. 13. dorſ.
Clauſ. 34 Ed. I. m. 11. dorſ.
Cl. 35. 1 Ed. I. m. 14. dorſ.

1. Of the 29th
2. Of the 23d
3. Of the 24th
4. And of the 35th

} of *Edward* I.

III. As to the Writs of Expences during the Reign of *Edward* II. they alſo prove,

That the Commons were, *de Mandato Regis*, called,

Clauſ. 2 Ed. II. m. 4. dorſ.
Clauſ. 5 Ed. II. m. 16. dorſ.
De expenſis Militum & Burgenſium.

1. To the Parliament of the 2d
2. To the Parliaments held the 5th

} of *Edward* II.

Nobiſcum ſuper diverſis negotiis, Nos & Statum Regni noſtri ſpecialiter tangentibus, tractaturi.

Stat. 17 Ed. II.

IV. But that which confirms all this, is the Statute of 17 *Edw.* II. ſo often mentioned before, which declares,

That thoſe Things which were for the eſtabliſhing the State of the King and of his Heirs, and for the Eſtate of the Realm and of the People, *ſoient tretez en Parlement.*

But by whom was all that to be done?

1. *Par Seigneur le Roy, & par l'aſſent*
2. *Des Prelats, Counts & Barons,*
3. *Et la Communalte du Reaume,*

as had been accuſtomed in former Times.

Cl. 16 Ed. II. m. 19. dorſ.
Cl. 17 Ed. II. m. 24. dorſ.
Cl. 18 Ed. II. m. 25. dorſ.
Cl. 19. Ed. II. m. 19. dorſ.

V. But the Writs concerning the Parliament held *ann.* 16, 17, 18, and 19 of *Edward* II. though they ſomewhat differ from the former, and ſay, *ad tractandum ſuper diverſis arduis negotiis, Nos & Statum Regni noſtri tangentibus*;

Yet they enforce my Argument: For the Commons were by them to treat, not only of divers, but of arduous Buſineſſes, which concerned the King and the State of the Realm.

VI. And for the Writs which we find recorded in the Time of *Edward* III. ſeveral of them alſo run, *venientibus ad tractandum ſuper diverſis & arduis negotiis, Nos & Statum Regni noſtri tangentibus.*

To

To give two or three Instances; they run so to the Sheriff, after the Ending,

1. Of the Parliament held at *Westminster*, 1 *Edw.* III. Clauſ. 1 Ed. III. pars 1. N°. 15.
2. Of the Parliament called at *New Sarum*, 1 *Edw.* III. Cl. 2 Ed. III. m. 9. dorſ.
3. And lastly, of another Parliament called at *Northampton* in the same Year. Cl. 3 Ed. III. m. 30. dorſ.

The Writ follows.

REX Vicecomiti Norf. ſalutem. —Præcipimus tibi, quod de communitate comitatus tui, tam infra libertates quam extra, habere facias dilectis & fidelibus noſtris Johanni de Ormeſby & Roberto de Nowers, Militibus, comitatus illius nuper ad Parliamentum noſtrum apud Northampton. die Paſchæ proximo præterito in tres ſeptimanas ſummonitum pro communitate comitatus prædicti, venientibus ad tractandum ibidem nobiſcum, & cum Prælatis, Proceribus regni noſtri ſuper diverſis & arduis negotiis Nos & ſtatum regni noſtri tangentibus, undecim libras & quatuor ſolidos pro expenſis veniendo ad Parliamentum prædictum, ibidem morando, & exinde ad propria redeundo; videlicet, pro viginti & octo diebus utroque prædictorum Johannis & Roberti capiente per diem quatuor ſolidos. Rot. Clauſ. 2 Ed III. par. 1. m. 26. dorſ.

Et hoc nullatenus omittas. Teſte Rege apud Northampton. 14 die Maii.

Per ipſum Regem & Concilium.

Conſimilia brevia habent Milites ſubſcripti, Vicecomitibus ſubſcriptis de ſummis ſubſcriptis, &c.

I will not trouble the Reader with Multitudes more of theſe Writs, which might be produced, and are to be met with in Mr. *Prynne*'s fourth Part of *A brief Regiſter, or Calendar and Survey of the ſeveral Kinds and Forms of Parliamentary Writs.* But,

VII. Plain it is, that in all the long Reign of *Edward* III. and of the ſeveral Parliaments which he held in his Time, and the many Bills and Petitions which the Commons then framed and propoſed in Matters that highly concerned the Prerogative, together with the King's Anſwers to them all,

I have yet met with nothing throughout the *Rolls* of thoſe Times, which gives me the leaſt Occaſion to believe that the Commons were ever debarred the Right and Privilege of Freedom of Debate in thoſe Parliaments.

Nay, on the contrary, that victorious King having a regard to the Quietneſs of his People, which he chiefly deſired to maintain in Tranquillity and Peace, and to govern according to the Laws, Uſages and

and Franchiſes of his Land, as he ſaith, He was bound by his Oath made at his Coronation: That victorious King, I ſay, did acknowledge before, upon the grievous Complaint of the Commons, That the Right of the Crown of *England*, and the Law of the ſaid Realm, was ſuch, that upon the Miſchiefs and Damages which happened to the Realm,

He ought and was bound of the Accord of his People in Parliament, thereof to make Remedy and Law, in voiding of the Miſchiefs and Damages which thereof came.

Which never could be done without a fundamental Freedom of Speech in Parliament.

VIII. We have already in another Chapter had the ſolemn Declaration of both Lords and Commons aſſembled in the Parliament 16 *Richard* II. *viz.*

That in Parliament, which is the higheſt Court of the whole Realm, all Equity do ſhine forth, without the leaſt Cloud or Shadow, like the Sun in its Meridian Glory, where Poor and Rich, refreſhed with Peace and Eaſe of their Oppreſſions, may always find infallible and ſure Refuge and Succour:

The Grievances of the Kingdom may be redreſſed, and the State of the King and Government of the Realm debated with wiſe Counſels:

The Domeſtick and Foreign Enemies of the King and Kingdom deſtroyed and repelled:

And that the Charges and Burthens of both may be ſuſtained with more Eaſe to the People.

Having thus made my Way ſmooth and plain through the four Reigns, and therein proved the Right of the Commons to treat and debate in Parliament, as ſome Writs do run,

1. *Super diverſis negotiis, Nos & Statum Regni noſtri ſpecialiter tangentibus*; or as others,

2. *Super diverſis & arduis negotiis, Nos & Statum Regni noſtri tangentibus.*

3. Or, as the Statute 17 *Edw.* II. For the eſtabliſhing of the King and of his Heirs, and for the Eſtate of the Realm and of the People.

4. Or, as the Statute 25 *Edw.* III. ſaith, The Miſchiefs and Damages which happened to the Realm, were to be remedied by the King, with Accord of his People in Parliament.

5. And laſtly, As the ſolemn Declaration of both Lords and Commons, 2 *Rich.* II. ſay, That in Parliament,

1. The Grievances of the Kingdom are to be redreſſed:

2. The State of the King;

3. And

3. And Government of the Realm:
4. The Enemies of the King and Kingdom to be repelled and deſtroyed;
5. And the Charges and Burthens of both to be ſuſtained to the greateſt Eaſe of the People. And ſo,
6. Both the Poor and Rich to be relieved from their Oppreſſions.

I cannot paſs by this natural and obvious Reflection upon the whole; *viz.*

That the Parliament being the higheſt Court of the whole Realm, wherein all Equity is to ſhine forth like the Sun in its meridian Glory;

And the Commons being ſo conſtituent and eſſential a Part and Member thereof, and called to treat with the King and Lords about the arduous Affairs concerning the State of the Kingdom;

That the Commons, as well as the Lords, muſt neceſſarily have a Freedom of Speech in Parliament; or otherwiſe it is impoſſible to imagine how they could ever treat or debate of all thoſe Affairs for which they were called, and much leſs agree to them.

For Treating, Debating, and Agreeing, does neceſſarily imply Liberty of Speaking, without which there never can be any Treating, Debating, or Agreeing at all.

And this King *Edward* III. and his Council well knew, that when he commanded all the Sheriffs of *England* to make ſpeedy Proclamation,

That ſuch of his People, which had been oppreſſed and grieved, not only by his ordinary Miniſters, but, as the *Rolls* hath it, *Auxi per aſcuns grants de noſtre Realm auxi bien nos Counſeillers, come autres a dammage & diſhonour de nous*; Should forthwith repair to his Parliament, then near at hand, there to receive ſpeedy Help and Conſolation.

Rot. clauſ. 4. Ed. III. m. 18. dorſ. De conqueri volentibus ad Parliamentum veniendum.

Nay, Declaration was openly made in the Parliament of the 15th of the ſame King, by his ſpecial Command,

Que cheſcun que ſe ſente grevez per le Roi, ou ſes miniſtres, ou autres, que ils metroient lour petitions avant, & ils averont bone & covenable remedie.

Rot. Parliam. 15 Edw. III. N°. 5.

And in the Writs for ſummoning a Parliament in the 21ſt of the ſame King, directed to all the Sheriffs of *England* to chuſe Knights, Citizens, and Burgeſſes, there is this memorable Clauſe inſerted:

Et ſcire vos volumus, quod dictum Parliamentum, non ad auxilia ſeu Tallagia a populo dicti Regni noſtri petenda, vel alia onera eidem populo imponenda, ſed duntaxat pro juſtitia ipſi populo ſuper damnis & gravaminibus ſibi illatis facienda fecimus ſummoniri.

Rot. clauſ. 21 Ed. III. par. 2. m. 9. dorſ.

Rot. Parliam. 37 Edw. III. N°. 2.

Laſtly, in the Parliament of the 37th of the very ſame King, *Simon de Langham*, Biſhop of *Ely* and Lord Chancellor, in the Preſence of the King, Lords, and Commons, declares, That the only Cauſe of ſummoning of that Parliament was for the Redreſs of Grievances; *viz.*

That the King, having well conſidered the great Goodneſs of God, eminently vouchſafed unto him in all his mighty and important Affairs; as alſo the extraordinary Aids given him,

1. By his Nobles,
2. And Commonalty,

and the manifold Perils ſuſtained by them in his Wars:

He did therefore then call them together in Order;

Firſt, For the firmer Eſtabliſhment of the Franchiſes of Holy Church;

Secondly, To redreſs the Grievances, Outrages and Miſchiefs, which had been done as well to the Nobles as Commonalty, againſt the Law of the Land.

And thereupon the King willed, ſaith the Chancellor, *Qui ſi ut ſe ſente grevez mette avant ſa petition en ce Parlement, & il ent avera covenable reſponſe.*

And who was it, do we think, that treated this People with all this Clemency and Sweetneſs? Was he a Prince deficient either in Courage or Sweetneſs?

Surely none dare ſay, when he conſiders that it was *Edward* III. the Arbitrer and Ballance-holder of Chriſtendom, Vicar General of the Empire, and who led Captives after his Triumphal Chariot two mighty Princes, the *French* and *Scottiſh* Kings.

Having thus previouſly enquired into the Practice of preceding Times, touching the Right of the Commons to treat and debate in Parliament of the arduous Affairs of the Kingdom, 'till the 11th of *Richard* II.

We will now begin with the Hiſtory or Series of the Invaſions which were made upon the Privileges of Parliament, touching Freedom of Speech for Redreſs of Grievances, and give ſeveral Inſtances.

The Original Grand Precedent.

IN the Parliament 20 *Richard* II. *Thomas Haxey*, Clerk, for the Honour and Profit of the ſaid King, and of all the Realm, delivered a Bill to the Commons, which being tranſlated out of old *French*, runs thus:

" May

" May it pleaſe the Commons of *England* in this preſent Parliament, to conſider the great Charges of our Lord the King in his Houſehold, by reaſon of the Multitude of Biſhops and Ladies, with their Retinue and People that belong to them, which are greater than have been in the Time of his Progenitors.

" And thereupon to ordain due Remedy, that the Biſhops henceforth may abide upon their Biſhopricks, and the Ladies upon their Seigniories; as well in caſe of our Lord the King and of the People, as for the Benefit and Good of the ſaid Biſhops Subjects, and for other good Purpoſes that may come thereof:

" And alſo to conſider how it came to paſs, that the Pope laid an Impoſition upon the Clergy of the Dioceſe of *Canterbury*, of four Pence in the Pound laſt Year; which Impoſition was expreſsly againſt the Regality of our Lord the King, to the great Damage and Deſtruction of the Clergy, and of the Crown of *England*; and annulling of the Rights of the Crown of our ſaid Lord the King:

" And thereupon to ordain due Remedy for the Benefit of our Lord the King and of his Kingdom, for God's ſake and of Charity."

King *Richard* being informed of the Bill, was very much offended at it, telling the Lords, That the Commons had thereby committed Offence againſt him, his Dignity and Liberty; the which he willed the Lords to declare the next Day to the Commons; and commanded the Duke of *Lancaſter* to charge Sir *John Buſſie*, Speaker for the Commons, upon his Allegiance to tell the Duke the Name of him who had delivered the ſaid Bill to the Commons. Rot. Parliam. 20 Rich. II. N°. 15.

Upon *Saturday les Seigneurs Eſperituelx & Temporelx feurent avec les Communes*, and declared to them the Will and Commandment of the King. Ib. N°. 16.

Whereupon the Commons delivered the Bill aforeſaid to the Lords, with the Name of the Exhibiter, *viz.* Sir *homas Haxey*, which Bill was after given to the Clerk of the Crown by the Clerk of the Parliament, by the Commandment of the King.

All this being done, the impetuous King and his Privados ſo far prevailed with the Lords, that on the fifth Day of *February* it was adjudged and declared, " That if any one, of what State or Condition " ſoever, ſhould move or excite the Commons of the Parliament, or " any other Perſon, to make Remedy or Reformation of any thing " which concerned the King's Perſon, his Government, or Regalty, he " ſhould be held for a Traitor." Ib. par. 3. m. 12.

And

And thereupon, the 7th of *February*, *Thomas Haxey* being brought before the King, the Lords Temporal, and Commons in *Alba Camera*, and the Bill being there read,

It was demanded by the Duke of *Lancaſter*, (Seneſchal of *England*) of the ſaid *Thomas Haxey*, whether he delivered the ſaid Bill to the Commons or no.

To which the ſaid *Thomas Haxey* anſwered that he did, *Et intentione ſua propter honorem & proficuum Regis ac Dominorum & totius Communitatis Regni.*

But this was not then admitted for a good Plea, for immediately *judicium fuit redditum* againſt poor *Haxey* as a Traitor.

Rot. Parl. 20 Rich. II. N°. 23. Proteſtation des Prelatz apres le Jugement de Sire Thomas Haxey.

This ſudden Judgment very much allarmed the Lords Spiritual, who thereupon made a Proteſtation, and humbly prayed the King that he would *remiſta & releſſa l'execution de la mort du dit Thomas & lui attria & dona ſa vie*; which was granted.

Then they prayed the King that for the Reverence of God, and for the Honeſty of Holy Church, he would grant them *la garde del Corps du dit Thomas*;

Which the King likewiſe aſſented to, commanding Sir *Thomas Piercy*, Steward of his Houſhold, to deliver *Haxey* to the Archbiſhop, *a garder ſauvement du grace du Roy.*

Rot. Parl. 20 Rich. II. pars 3. m. 12.

Thus ſtood the Caſe of *Haxey* during that Parliament, but after it was ended, he one way or other got a Pardon of the Judgment, with very ample Clauſes of reſtoring him, *ad communem Legem & in ſtatum priſtinum.*

Rot. Parl. 1 Hen. IV. N°. 9. par Tho. Haxey, Clerk.

But not relying upon the Validity of that Pardon, he in a Parliament held 1 *Henry* IV. ſetting out the former Matter of Fact, and that he was *de voluntee du dite Roy Richard* II. adjudged a Traitor, *encountre droit & la Courſe quel avoit uſſe devant en Parlement*, *i. e.* contrary to Right, and to the Courſe that had been heretofore uſed in Parliament, prayed the King to cauſe the Record and Proceſs of the Judgment to be produced in that Parliament, and to caſs and adnul it as erroneous.

And alſo to reſtore him intirely to his Degree, Eſtate, Goods, Chattels, Farms, Annuities, Penſions, Lands, Tenements, Rents, Offices, Advowſons, and Poſſeſſions whatſoever.

Upon which Petition the King, *de l'advis & aſſent des toutz les Seigneurs Eſpirituelx & Temporelx*, ordained and adjudged, That the ſaid Judgment ſhould be wholly quaſhed, reverſed, repealed, and annulled; and that the ſaid *Thomas Haxey* ſhould be reſtored to his Name and Fame, and that He, and his Heirs, ſhould be capable to purſue, demand, and have their Inheritance as Heirs to their Anceſtors, notwithſtanding the ſaid Judgment, whereby the Blood was interrupted between the ſaid *Thomas* and his Heirs whatſoever.

But

But as if the Reverſal by the King and Lords of *Haxey*'s Judgment was not ſufficient, the Commons back all that with their Petition, much in the ſame Words of *Haxey*'s.

Rot. Parl. 1 Hen. IV. N°. 104. Entre petition baillez par communes d'Engleterre en Parlement pur Thomas Haxey, Clerk.

1. That he was by the Will of *Richard* II. adjudged a Traitor for delivering a Bill to the Commons.

2. And to forfeit all that he had.

3. And contrary to the Courſe that had been theretofore uſed in Parliament, *en Amentiſſement des Cuſtumes de les Communes.*

4. Therefore they prayed that the Judgment might be annulled and quaſhed in that Parliament as erroneous.

5. And that *Haxey* might be entirely reſtored, as is expreſſed in his Petition.

6. And all this the Commons pray, *ſi bien en accompliſſement de droit come pur Salvaſion des Liberties de les ditz Communes.*

To which Bill of the Commons this Anſwer was given:

Anſwer to the Commons Bill for Haxey, *by the King and Lords.*

The King willeth, by the Advice and Aſſent of all the Lords Spiritual and Temporal, That the ſaid Judgment given againſt the ſaid *Thomas Haxey*, Clerk, in the Parliament held at *Weſtminſter* in the 20th Year of the Reign of the late King *Richard*, *ſoit de tout caſſez, reverſez, adnullez, & tenuz, de null force ne d'effect. Et que lite Thomas ſoit reſtitut a les noun & fame & fait & tenuz perſone hable en manere come il feuſt devant le dite jugement en ſe rendu come en le Record ent fait & emollez perdevant en ceſt Roll de Parlement y piert pluis au plein.*

I have dwelt the longer upon this great Inſtance, becauſe I would not have the Reader miſled into a wrong Judgment of *Haxey*'s Caſe, as ſome have been for want of being ſufficiently informed of the ſeveral Tranſactions which fell out concerning it.

I do not know what any Man can ſay to juſtify this Invaſion, which *Richard* II. made upon the ancient Privilege and Freedom of Parliament, in the Perſon of *Haxey*; but I do know, that amongſt other Articles with which that unhappy King was charged at the Time of his Depoſition, this was one:

ARTICLE IX.

"*Item, Licet de Statuto & Conſuetudine Regni,*

Rot. Parl. 1 Hen. IV. Les Records & proceſſe del Renunciation du Roy Richard II.

" At the calling of every Parliament, the People in all Countries " ought to be free to chuſe and depute Knights for Shires to ſit in " Parliament, and preſent their Grievances, and to ſue for Remedy to " the King, that the King might the better obtain in Parliament the " Effects of his own raſh Will, frequently directed his Precepts to his " Sheriffs, that they would cauſe certain Perſons named by the King " himſelf to come to his Parliaments as Knights for the Shires, which " Knights being addicted to the King's Intereſt, he could prevail with,

"as he often did, ſometimes by divers Threats, ſometimes by Re-
"wards, to conſent to things prejudicial to the Kingdom, and very
"burthenſome to the People, and particularly to grant to the ſaid
"King a Subſidy upon Wools for Term of his Life.
"And another Subſidy for certain Term of Years, *ſuum populum*
"*nimium opprimendo.*"

And that which confirms all that I have ſaid in this Inſtance, is a Statute which was made 4 *Henry* VIII.

Whereby it was eſtabliſhed and enacted,

Raſt. Stat. 4 Hen VIII. cap. 8.

"That all Suits, Accuſements, Condemnations, Executions, Amerce-
"ments, Puniſhments, Corrections, Charges, and Impoſitions that had
"been then put, or which hereafter ſhould be put, upon *Richard*
"*Strode*, and every of his Complices that were of that Parliament, or
"ſhould be of any other Parliament, for any Bill, ſpeaking, reaſon-
"ing, or declaring of any Matter or Matters concerning the Parlia-
"ment, to be communed or treated of, ſhould be utterly void, and
"of none effect."

This Act was not introductive of any new Law, nor did it give any new Privilege to the Members of either Houſes of Parliament.

It was only declarative of the ancient Cuſtom and Uſage of Parliament, and was a publick general Law, though made upon a private and a particular Occaſion.

Which is an evident Proof how the Privilege of Parliament ſtood, as to Freedom of Speech for Redreſs of Grievances, for any thing I have yet found out to the contrary, till the Reign of Queen *Elizabeth*.

And therefore I am come to conſider what Inſtances are to be gathered out of the Journals of Parliament in her Reign.

The Firſt Inſtance.

Sir Simond D'Ewe's Journal of Parliaments during the Reign of Queen *Elizabeth*, fol. 168. col. 1.

IN the Parliament *anno* 13 *Elizabeth*, Mr. *Strickland*, a Member of the Houſe of Commons, for exhibiting a Bill for Reformation of Ceremonies, and his Speech thereupon, was called before the Lords of the Privy Council, and required to attend upon them, and to make ſtay for coming to the Houſe in the mean Seaſon.

Idem, fol. 175. col. 1.

Mr. *Charlton*, with a very good Zeal and orderly ſhew of Obedience, made Signification, how that a Member of the Houſe was detained from them, (meaning Mr. *Strickland*) by whoſe Commandment, or for what Cauſe he knew not.

But foraſmuch as he was not now a private Man, but to ſupply the Room, Perſon, and Place of a Multitude ſpecially choſen, and there-

fore

fore ſent, he thought that, neither in regard of the Country, which was not to be wronged, nor for the Liberty of the Houſe, which was not to be infringed, we ſhould permit him to be detained from us, but, whatſoever the Intendment of this Offence might be, that he ſhould be ſent for to the Bar of that Houſe, there to be heard, and there to anſwer.

Mr. Treaſurer in ſome Caſe gave Advertiſement to be wary in our Proceedings, and neither to venture further than our aſſured Warrant might ſtretch, nor to hazard our good Opinion with her Majeſty, on any doubtful Cauſe. Withall he wiſhed us not to think worſe than there was Cauſe; for the Man (quoth he) that is meant is neither detained nor miſuſed, but on Conſideration is required to expect the Queen's Pleaſure upon certain ſpecial Points, wherein (he ſaid) he durſt to aſſure that the Man ſhould have Cauſe to diſlike or complain, ſince ſo much Favour was meant unto him as he reaſonably could wiſh.

He farther ſaid, that he was in no ſort ſtayed for any Word or Speech by him in that Place offered, but for the exhibiting of a Bill into the Houſe againſt the Prerogative of the Queen, which was not to be tolerated.

Nevertheleſs, the Conſtruction of him was rather to have erred in his Zeal and Bill offered, than malicioufly to have meant any thing contrary to the Dignity Royal.

And laſtly, he concluded, That oft it had been ſeen, that Speeches have been examined and conſidered of.

Sir *Nicholas Arnold*, with ſome Vehemency moved, that Care might be had for the Liberty of the Houſe. He was enforced (he ſaid) rather to utter, and ſo to run into Danger of Offence of others, than to be offended with himſelf.

Mr. Comptroller replied to the Effect Mr. Treaſurer had before ſpoken.

Mr. *Cleere* told, how the Prerogative is not diſputable, and that the Safety of the Queen is the Safety of the Subject.

He added, how that, for Matter of Divinity, every Man was for his Inſtruction to repair to his Ordinary, being a private Man, where he utterly forgot the Place he ſpake in, and the Perſon who was meant; for that Place required and permitted free Speech with Authority, and the Perſon himſelf was not a private Man, but a publick, by whom even the Ordinary himſelf was to be directed; he concluded that foraſmuch as the Cauſe was not known, he therefore would that the Houſe ſhould ſtay.

Mr.

Mr. *Yelverton* ſaid he was to be ſent — for arguing in this Sort.

Firſt he ſaid the Precedent was perillous, and though in this happy Time of Liberty amongſt ſo good and honourable Perſonages, under ſo gracious a Prince, nothing of Extremity or Injury was to be feared, yet the Times might be altered, and what now is permitted, hereafter might be conſtrued as of Duty and enforced, even on this Ground of the preſent Permiſſion.

He farther ſaid, that all Matters not Treaſon, or too much to the Derogation of the Imperial Crown, were tolerable there, where all Things came to be conſidered of, and where there was ſuch Fullneſs of Power, as even the Right of the Crown was to be determined, and by Warrant thereof we had ſo reſolved, that to ſay the Parliament had no Power to determine of the Crown, was High Treaſon.

See the Act of 13 Elizabeth, cap. 1. *whereby certain Offences be made Treaſon.*

He remembred, how that Men are not there for themſelves, but for their Countries.

He ſhewed, it was fit for Princes to have their Prerogative, but yet the ſame to be ſtraitened within reaſonable Limits.

The Prince he ſhewed could not of herſelf make Laws, neither might ſhe by the ſame Reaſon break Laws.

He further ſaid, that the Speech uttered in that Place, and the Offer made of the Bill, was not to be condemned as evil.

For that, if there were any thing in the Book of *Common Prayer* either Jewiſh, Turkiſh, or Popiſh, the ſame was to be reformed.

He alſo ſaid, that amongſt the Papiſts it was bruited, That by the Judgment of the Council *Strickland* was taken for an Heretick, it behoved therefore to think thereof.

Mr. *Fleetwood* firſt ſhewed the Order of civil Arguments from the Cauſe to this Effect:

That Time muſt be known and Place obſerved. He ſaid then, that of Experience he could report of a Man that was called to account of his Speech in the 5th of this Queen; but he ſaid he could not meddle with ſo late Matters, but what he had learned in the *Parliament Rolls*, he thought convenient ſhould be known and conſidered of.

In the mean Time of *Henry* IV. a Biſhop of the Parliament was committed to Priſon by Commandment of the King.

The Parliament reſolved to be Suitors for him, and in the Time of King *Henry* V. the Speaker himſelf was committed, *&c.* with him another of the Houſe.

The Houſe thereupon ſtayed, but Remedy they had none, other than to be Suitors to the King for them.

Whereupon he reſolved, that the only and whole Help of the Houſe for Eaſe of their Grief in this Caſe, was to be humble Suitors to her Majeſty, and neither ſend for him, nor demand him of Right.

During

During which Speech the Counſel whiſpered together, and thereupon the Speaker moved that the Houſe would make ſtay of any further Conſultation thereupon.

Now follows an Obſervation upon Mr. *Strickland*'s coming to the Houſe. Idem, fol. 176. col. 2.

This Day being nominated, the laſt Committee in a Bill out of that often beforecited anonymous Journal mentioned by Sir *Symeon D'Ewes*, becauſe it doth very much conduce to the Declaration and Maintenance of the Liberties of the Houſe.

For the ſaid Mr. *Strickland* having, on *Saturday* the 14th Day of this Inſtant *April*, preſſed very earneſtly the Reformation of the Book of *Common Prayer*, and ſome Ceremonies of the Church, was, after the Adjournment of the Houſe of Commons on that Day, being *Eaſter* Eve, called before his Majeſty's Council about the Beginning of the Week following, and was commanded by them to forbear coming to the ſaid Houſe in the mean Seaſon, and to attend their further Pleaſure.

Whereupon on *Friday* immediately following, being the 20th Day of this ſaid Inſtant *April*, divers Speeches and Motions having paſſed in the Houſe, touching the Breach of the Liberties thereof, by reſtraint of one of the Members from repairing thither, (though he were neither impriſoned nor confined) Mr. Speaker did at the laſt deſire them to forbear further Conſultation on the ſaid Matter.

And the Houſe having at his Requeſt paſſed over the ſaid Day in the Morning, in the Agitation of other Buſineſs, the abovementioned Mr. *Strickland* did this Afternoon (upon an Advertiſement, as it ſhould ſeem, from her Majeſty's Council) repair again to the ſaid Houſe ſoon after it was ſet.

And coming juſt upon the Time when the foregoing Bill for coming to Church and receiving the Communion, was in the referring to Committees,

The ſaid Houſe did, in witneſs of their Joy for the Reſtitution of one of their ſaid Members a while from them reſtrained, preſently nominate him one of the ſaid Committees.

This put me in Mind of the Proteſtation which was made in the Names of *Henry* VIII, and the whole Council, and Clergy of *England*, why they refuſed to come to the Pope's Council at his Call.

In which Proteſtation they ſay,

That they would have a Council, and deſired it; yea and craved nothing ſo oft of God as that they might have one: But yet they would have it to be ſuch a one as Chriſtian Men ought to have, that is, frank and free, where every Man without Fear might ſpeak his Mind. Foxe's Acts and Monuments, Vol. II. fol. 310. Impreſ. 1684.

They desired that it might be an Holy Council, where every Man might go about to set up Godliness, and not apply all their Study to oppressing of Truth.

They would have it to be general, that is to say, kept at such Time and in such Place, that every Man which sought the Glory of God might be present, and there frankly utter his Mind.

The Second Instance.

Sir Symeon D'Ewes's Journal of the House of Commons, fol. 282. col. 1.

ON *Saturday* the 21st Day of *January*, 23 *Elizabeth*, Mr. *Paul Wentworth* made a Motion for a publick Fast, and daily Preaching.

The Fast to be appointed on some certain Day, but the Preaching to be every Morning at Seven of the Clock, before the House did sit.

That so they beginning their Proceedings with the Service and Worship of God, he might the better bless them in all their Consultations and Actions.

Sir *Francis Knollys*, Treasurer of the Queen's Houshold, spoke against this Motion;

Mr. *Thomas Cromwell* spoke for it;

Mr. *Alford* against it;

Mr. *Coke* for it;

Mr. Secretary *Wilson* for it;

Mr. Serjeant *Flowerden* for it;

And Mr. *Norton* shewed Precedents, that there had been Fasts in *London*, by Order only from the Council.

By which it seemeth he intended to infer, that a Parliament might much rather appoint it.

Hereupon the House being divided, and many Arguments being spent *pro & con*, at length the said Matter in Question was put to Voices, and the better Side had the greater Number:

For there were one hundred and fifteen Voices for it;

But one hundred against it.

And so it was ordered, that as many of the House of Commons as conveniently could, should on the *Sunday* seven-nights after, being the 29th of this Instant *January*, assemble and meet together in the *Temple* Church, there to hear Preaching, and join in Prayer, together with Humiliation and Fasting, for the Assistance of God's Spirit in all

all their Conſultations during this Parliament; and for the Preſervation of the Queen's Majeſty and her Realms.

And that the Preachers who ſhould perform the Work and Service of that Day, might be appointed by ſuch of her Majeſty's Council as were of the Houſe, to the Intent that they may be diſcreet Perſons, and keep a convenient Proportion of Time, without intermeddling with Matter of Innovation or Unquietneſs.

Mr. Speaker declared himſelf for his own Part to be very ſorry for the Error that happened here in this Houſe upon *Saturday* laſt, in reſolving to have a publick Faſt, and ſhewed her Majeſty's great Miſliking of the Proceedings of the Houſe therein, declaring it to fall out in ſuch ſort as he before did fear it would do. *Idem*, fol. 283. col. 3.

And adviſing the Houſe to a Submiſſion in that Behalf; farther moved them to beſtow their Time and Endeavour hereafter, during this Seſſion, in Matters proper and pertinent for this Houſe to deal in, and to omit all ſuperfluous and unneceſſary Motions and Arguments, with all due Regard and Conſideration to the Order of the Houſe.

Mr. Vice-Chamberlain, declaring a Meſſage from her Majeſty to this whole Houſe, by her Highneſs's Commandment ſhewed unto them her great Admiration of the Raſhneſs of this Houſe in committing ſuch an apparent Contempt againſt her Majeſty's expreſs Commandment very lately before delivered unto the whole Houſe by the Lord Chancellor in her Highneſs's Name, as to attempt and put in Execution ſuch an Innovation, as the ſame Faſt, without her Majeſty's Privity and Pleaſure firſt known:

And concludeth, That he thinketh it very meet, that this whole Houſe, or ſome one of this Houſe, by Warrant of the Houſe, in the Name of the ſaid Houſe, do make moſt humble Submiſſion unto her Majeſty, acknowledging the ſaid Offence and Contempt, and in moſt humble and dutiful wiſe to pray Remiſſion of the ſame at her Highneſs Hands; *Idem*, fol. 284. col. 1.

With full Purpoſe hereafter to forbear committing of the like Offence.

Mr. *Carleton* ſtood up, and offered to have ſpoken, but was interrupted by Mr. Speaker and the Houſe.

Then Mr. Speaker aſked the Queſtion,

Whether Mr. Vice-Chamberlain ſhould carry the Submiſſion of the Houſe to her Majeſty.

And it was agreed by the Conſent of the whole Houſe.

Mr.

Mr. *Carleton* offered again to ſpeak, ſaying with ſome Repetition, That what he had to ſay was for the Liberty of the Houſe.

But the Speaker notwithſtanding and the Houſe (out of a tender Care, as it ſeemeth, to give no farther Diſtaſte to her Majeſty) did ſtay him.

The Third Inſtance.

Sir Symeon D'Ewes's Journal of the Houſe of Commons, fol. 470. col. 2.

ON *Saturday* the 24th Day of *February*, 35 *Eliz.* Mr. *Peter Wentworth* and Sir *Henry Bromley* delivered a Petition unto the Lord Keeper, therein deſiring the Lords of the Upper Houſe to be Suppliants with them of the Lower Houſe unto her Majeſty, for entailing the Succeſſion of the Crown, whereof a Bill was readily drawn by them.

Her Majeſty was highly diſpleaſed therewith after ſhe knew thereof, as a Matter contrary to her former ſtrait Commandment, and charged the Council to call the Parties before them.

Sir *Thomas Heneage* preſently ſent for them, and after Speeches had with them, commanded them to forbear the Parliament, and not to go out from their ſeveral Lodgings.

The Day after, being *Sunday* and the 25th of *February*, though the Houſe ſate not,

Yet they were called before the Lord Treaſurer, the Lord *Buckhurſt*, and Sir *Thomas Heneage*.

The Lords intreated them favourably and with good Speeches:

But ſo highly was her Majeſty offended, that they muſt needs commit them; and ſo they told them.

Whereupon Mr. *Peter Wentworth* was ſent Priſoner to the *Tower*: Sir *Henry Bromley*, and one Mr. *Richard Stevens*, to whom Sir *Henry Bromley* had imparted the Matter, were ſent to the *Fleet*; as alſo Mr. *Welch*, the other Knight for *Worceſterſhire*.

About this Matter, in the Beginning of the Parliament, was appointed a Committee to be had of many grave, wiſe, and ancient Parliament Men, which were of the Houſe: But at this Time few met at the Place appointed, at leaſt not ſuch as were expected.

Idem, fol. 597. col. 1.

On *Saturday* the 10th Day of *March* following, Mr. *Wroth* made a Motion touching the Members ſo committed on the 25th Day of *February* foregoing; which remaineth very legible in the original Journal Book of the Houſe of Commons, although it be croſſed out.

The Reaſon of which ſaid croſſing out, is very hard to conjecture, in regard that the ſaid Motion was, doubtleſs, made this Morning, as doth

doth plainly appear alſo by the afore cited anonymous Journal more particularly mentioned at the beginning of this preſent Journal; out of which is ſupplied in Manner and Form following:

Mr. *Wroth* made a Motion, That in reſpect ſome Counties might complain of the Tax of theſe many Subſidies, their Knights and Burgeſſes never conſenting to them, nor being preſent at the Grant:

And becauſe an Inſtrument, taking away ſome of its Strings, cannot give its pleaſant Sound; therefore deſired that we might be humble and earneſt Suitors to her Majeſty, That ſhe would be pleaſed to ſet at Liberty thoſe Members of the Houſe that were reſtrained.

To this was anſwered by all the Privy Counſellors, That her Majeſty had committed them for Cauſes beſt known to herſelf:

And for us to preſs her Majeſty with this Suit, we ſhould but hinder them whoſe Good we ſeek.

And it is not to be doubted but her Majeſty, of her gracious Diſpoſition, will ſhortly of herſelf yield to them that which we would aſk for them.

And it will like her better to have it left unto herſelf, than ſought by us.

From hence we may obſerve, That one muſt not always ground his Judgment upon ſuch Actions of Princes, which ſhew rather how far the Abuſe of their Power can ſtretch, than how far the legal Uſe thereof is extended.

The Fourth Inſtance.

ON *Tueſday* the 27th Day of *February*, 35 *Eliz.* Mr. *Morrice*, Attorney of the Court of *Wards*, moveth the Houſe touching the hard Courſes of the Biſhops and Ordinaries, and other Eccleſiaſtical Judges, in their Courts uſed towards ſundry learned and godly Miniſters and Preachers of this Realm, by way of Inquiſition, Subſcription and binding Abſolution, contrary (he ſaid) to the Honour of God, the Regality of her Majeſty, the Laws of this Realm, and the Liberties of the Subjects of the ſame; compelling them upon their own Oaths to accuſe themſelves in their own private Actions and Words, and Thoughts, if they ſhall take ſuch Oaths, becauſe they know not to what Queſtions they ſhall anſwer 'till after the Time they be ſworn:

Sir Symeon D'Ewes's Journal of the Houſe of Commons, fol. 474. col. 1.

And alſo after ſuch Examination proceed againſt them by Deprivation, Degradation, or Suppreſſion, by ſuch their own Accuſations of themſelves.

And if they refuſe ſuch Oath, then they commit them to Priſon, and there keep and detain them at their own Pleaſure, not abſolving or releaſing them, until they ſhall firſt have taken a Corporal Oath of their Canonical Obedience to their Ordinaries.

And ſhewing farther at large the great Inconveniencies thereby grown to the free Subjects of this Realm, doth in the End pray a Conſultation to be had therein by this Houſe for Redreſs of the ſaid Enormities.

And offereth unto Mr. Speaker two Bills:

The one concerning the ſaid Inquiſitions, Subſcriptions, and offering of Oaths;

And the other concerning their Impriſonments upon their Refuſal to the ſaid Oaths: Praying that the ſaid latter Bill, which concerneth the ſaid Impriſonments, might be read; and the other to be offered to this Houſe at ſome other more convenient Time.

Idem, fol. 476. col. 1. Hereupon the Houſe was in Queſtion, Whether it ſhould be committed to the Speaker only, or to the Privy Council and him: But it was holden to be againſt the Order of the Houſe, that any Bill ſhould be committed before it was read.

Therefore, upon a Motion made by Mr. *Wroth*, it was agreed, that Mr. Speaker ſhould have it.

⌜ This Afternoon at two of the Clock, Mr. Speaker was ſent for to the Court, where the Queen herſelf gave him Commandment to deliver unto the Houſe —

— And ſo the Matter abruptly breaks off in the ſaid anonymous Journal, mentioned more particularly in the Beginning of this preſent Journal, out of which all theſe aforeſaid Speeches are inſerted.

But that which ſhould here follow can be no more, but only that her Majeſty did command him to deliver a certain Meſſage to the Houſe the Day following, which he did then perform accordingly.

Idem, fol. 178. col. 2. The Meſſage delivered me from her Majeſty (ſaith the Speaker) conſiſteth in three Things.

1. The End for which the Parliament was called.
2. The Speech which the Lord Keeper uſed from her Majeſty.
3. What her Pleaſure and Commandment now is.

For the Firſt, It is in me and my Power (I ſpeak now in her Majeſty's Preſence) to call Parliaments.

It

It is in my Power to end and determine the ſame.

It is in my Power to aſſent or diſſent to any thing done in Parliaments.

The calling of this Parliament was only that the Majeſty of God might be more religiouſly ſerved: And thoſe that neglect this Service might be compelled by ſome ſharp Means to a more true Obedience and more true Service of God, than there hath been hitherto uſed.

And farther, That the Safety of her Majeſty's Perſon, and of this Realm, might be by all means poſſible provided for againſt our great Enemies the Pope and the King of *Spain*.

Her Majeſty's Pleaſure being then delivered unto us by the Lord Keeper,

It was not meant we ſhould meddle with Matters of State, or Cauſes Eccleſiaſtical;

For ſo her Majeſty termed them.

She wondered that any could be of ſuch high Commandment to attempt (I uſe her own Words) ſo expreſsly contrary to that which ſhe had forbidden.

Wherefore with this ſhe was highly offended.

And becauſe the Words then ſpoken are not now perhaps well remembered, or ſome be now here that were not then preſent; her Majeſty's preſent Charge and expreſs Commandment is, That no Bill touching the ſaid Matters of State or Reformation in Cauſes Eccleſiaſtical, be exhibited.

And upon my Allegiance I am commanded, if any ſuch Bill be exhibited, not to read it, *&c.*

And this alſo brings to my Remembrance the Account which *Andrew Dudithius*, Biſhop of five Churches, writ to *Maximilian* II. Emperor of *Germany*, touching the Council of *Trent*.

His Words are theſe:

What Good could be done in that Council, in which the Votes were not weighed, but numbered? History of the Council of *Trent*, fol. 481

If Goodneſs of the Cauſe, if Reaſon had been the Weapons to fight withal, though we were but few, we had vanquiſhed a great Army of our Enemies.

But ſeeing that Number only came into the Field, in which we were far inferior to them, though our Cauſe were good, we could not poſſibly prevail.

The Pope had an hundred for one: and in caſe thoſe had not been enough, he could have created a thouſand more to have helped at a need.

We

We daily ſaw hungry and needy Biſhops come to *Trent*, Youths for the moſt part, which did but begin to have Beards, given over to Luxury and Riot, hired only to give their Voice as the Pope pleaſed.

They were both unlearned and ſimple, yet fit for the Purpoſe; in regard of their impudent Boldneſs.

When theſe were added to the Pope's old Flatterers, Iniquity triumphed, and it was impoſſible to determine of any thing, but as they pleaſed, who thought it to be the higheſt Point of their Religion to maintain the Authority and Luxury of the Pope.

There was a grave and learned Man, who was not able to bear ſo great an Indignity; he was preſently traduced, as being no good Catholick, and was terrified, threatened, and perſecuted, that he might approve Things againſt his Will.

In ſum, Matters were brought to that paſs, by the Iniquities of thoſe that came thither fitted and prepared, that the Council ſeemed to conſiſt not of Biſhops, but of diſguiſed Maſkers; not of Men, but of Images, ſuch as *Dædalus* made, that moved by Nerves which were none of their own.

They were hireling Biſhops, who, as Country Bag-pipes, could not ſpeak but as Breath was put into them.

The Holy Ghoſt had nothing to do in this Aſſembly.

All the Counſel there given proceeded from human Policy, and tended only to maintain the Pope's immoderate and ſhameful Domination:

Anſwers were expected from thence, as from the Oracles of *Delphos* and *Dodona*.

The Holy Spirit, which, as they boaſt, doth govern their Counſels, was ſent from thence in a Poſtilion's Cloak-bag; which, in caſe of any Inundations, could not come thither (a Thing moſt ridiculous) until the Waters were aſſwaged.

So it came to paſs that the Spirit was not upon the Waters, as it is in *Geneſis*, but by the Water-Side.

O monſtrous extraordinary Madneſs! nothing could be ratified which the Biſhops (as if they had been the common People) did decree, unleſs the Pope made himſelf Author of it.

This is by Way of Digreſſion, but I think I have ſufficiently ſhewed in the foregoing Inſtances, how, after the long Sleep of ſo many Years, Queen *Elizabeth*, (by the Inſtigation of ſome prevailing evil Counſellors about her) was over-perſuaded to put in Exerciſe that Imperial Power they pretended ſhe was cloathed with over Parliaments, as to obſtruct and invade the immemorial Liberties of Freedom of Speech

Speech of the Houſe of Commons, for redreſs of the Grievances of the Nation.

And now let us look into the Reign of King *James* I, and ſee by what Inſtances we can ſhew that the ſame Encroachments were continued and improved in his Days.

The Fifth Inſtance.

ON *Monday* the 5th Day of *February*, 1620. the Houſe being come together, and Mr. Speaker being come with his Mace, and Prayers being ended, Journ. Dom. Com. 18 & 19 Jac. I.

Sir *George Moore* made the firſt Motion, and moved for the Committee for Privileges and Elections and Returns to be heard at the *Chequer Chamber*, upon *Tueſdays* and *Thurſdays* weekly, in the Afternoon.

Sir *Edward Gyles* moved for a Petition to the King for Freedom of Speech, and that thoſe that ſpake extravagant in the Houſe might be puniſhed by the Houſe, and not after Parliament, in regard of the late Proclamation:

And that thoſe in the Parliament might be ſecured in reſpect of the Multitude of Popiſh Prieſts and Jeſuits, which in a numberleſs Number flock together to this City, contrary to the Statute that they ſhould not come within ten Miles of it or the Court.

This Motion of Sir *Edward Gyles* was ſeconded by Sir *Robert Philipps*, whoſe Speech had two Parts.

Firſt, His approving the two former Propoſitions.

Secondly, The Means which he thought fitteſt to bring it to paſs.

His Reaſons for the *Firſt*, why we ought to ſtand for our Privileges, as Freedom of Speech, *&c.* were theſe:

1. Of Honour and Thankfulneſs to our Predeceſſors, who have left our Liberties to us inviolated.

2. We ſhall do more Hurt than Good, if we infringe or derogate from the Privileges we enjoy.

3. As our Anceſtors had a Care of leaving them free to us, ſo we ought to be careful to preſerve them, and leave them free to thoſe that ſucceed.

The Reaſons of the *Second* Propoſition, That ſome Order might be taken with the Papiſts, Prieſts and Jeſuits, were,

1. Becauſe it is the Honour, that every Law-maker ſhould give to his Laws to ſee them executed.

2. This would tend to the Safety of the King and all us that are aſſembled in Parliament.

3. It is unworthy that Papiſts ſhould enjoy ſo large a Privilege, as true Subjects that carry loyal Hearts to their Sovereign.

4. The ſuffering of them is very ſcandalous: For now to go to a Sermon or a Maſs is counted all one.

5. It is unfit that Reformers of Religion, and Reformers both of that and other Wrongs, ſhould be ſo near together.

The *Second* Part of his Speech was the Means how to have thoſe Propoſitions effected:

Which in his Opinion was to go to the Lords, and to deſire them to afford us a Conference about Privileges and Safety, and to ſue with us to the King for them; before which we cannot well proceed, either to the King's Supply, or our own Grievances.

Here the Speaker beginning to interrupt him, Sir *Thomas Roe* replied, That the Speaker was not to have any Voice, but when the Houſe is divided.

Sir *Edward Cooke* ſeconded and approved the firſt of the Propoſitions, to ſue for our Privileges, and cited the 4th of *Henry* VIII. where one *Stroade* ſpeaking freely in the Parliament againſt the Abuſes of the Stannaries, was, as ſoon as he came Home into the Country, committed by the Steward.

But the next Seſſions of Parliament he was delivered, and allowed Freedom of Speech; but he liked not of going to the Lords, becauſe they had formerly been rejected by them in the like Kind.

Then ſpake Secretary *Calvert*, and ſaid, That the Petition of Freedom of Speech was already granted by the King; and that his Majeſty had already called this Parliament for Reformation of Manners and Preſervation of the State from Scandal, which was likely to grow, if the King's Wants were not ſupplied.

He thought fit we ſhould begin with the firſt, becauſe Nature and Reaſon would, that the Head ſhould firſt be cured, becauſe an aking Head makes a ſick Body.

The Reaſons of the Supply were,

Firſt, for the King's private Neceſſaries being indebted, by reaſon of the many Embaſſadors ſent and entertained by him.

This could not be ſpared without Diſhonour to the King and theſe his Kingdoms.

And withal he ſhewed how frugal the King had been, in ſaving of his Houſhold Expences, and beſtowing it on his Navy, *&c.*

Yet all could not ſerve; and ſo, though nothing grieves him more than to be troubleſome to his Subjects, yet, his Wants compelling him, he is enforced to repair to this Houſe for a Supply. Wants and Penury, you know, bring many Inconveniencies in private Perſons, but many more in Princes.

Queen *Elizabeth* received ſo many Subſidies, which annually, if they were computed, amount to three hundred and fifty thouſand Pounds yearly.

The Second Cauſe of this Supply is the Relief and Defence of the *Palatinate*, the Patrimony of the King's Grand Children;

All which *Spinola* hath over-run, except *Heidelburg* and two Towns more.

And therefore it is high Time to make Speed to ſend Succour.

And that the King had referred the Conſideration of this Buſineſs to many noble and worthy Gentlemen well experienced, and erected a Council of War, who have ſet down a Proportion, which I cannot conceal from you, *viz.* That the Maintenance of the Wars there for one Year will amount to three hundred thouſand Pounds; wherein how he may be ſupplied, I leave to the Conſideration of this honourable Houſe of Parliament, and deſire that they would refer it to a Committee.

Then ſaid Sir *William Cope*, I would this Parliament had been three Months ſooner, for Relief of the King of *Bohemia*.

And therefore he deſired that a Committee of the whole Houſe might conſult of it.

Next after Sir *William Cope*, ſpake Sir *Thomas Edmonds*, beſeeching them to conſider, that never any time more preſſed the Conſciences of Subjects to contribute, than the preſent Occaſion; and that if it ſhould be hindered by any Diviſion, who does not ſee what Miſchief would enſue? And therefore deſired them to make it their firſt Care, and that their Affection to the King being ſeen, would gain from him ſo great a Retribution of Grace, as in Reaſon they could deſire.

Next after, Sir *John Cotton* inſtanceth, That this Supply muſt be given ſuddenly, becauſe the Moneys muſt be levied, that the Forces may go out in the Spring;

And

And then he ſhewed, That ſince the Conqueſt there never was the like Occaſion for Subjects to ſupply the King.

He declareth four principal Supplies ſince the Conqueſt. As

Firſt, The Recovery of *Jeruſalem*.

Secondly, For Redemption of *Richard Cœur de Lyon*, his Ranſome, being impriſoned in *Germany*.

Thirdly, For recovering of *France*.

Fourthly, The Defence of *Ireland* in Queen *Elizabeth*'s Time.

For the firſt, *Henry* III. had the ſecond of all Temporalities.

Edward I. pawned his Jewels, and would (as the Story ſays) have pawned *London*.

For the ſecond, the Clergy did pawn their Shrines for *Richard*'s Ranſom.

But he endeavoured to prefer the King's Occaſions at Home and Abroad, by the Defence of the ſaid *Palatinate*, to be beyond all theſe.

And therefore deſired it to go on this Day.

Then ſtood up Sir *George More*, and ſhewed how fit it was to have our Privileges free.

The King ſaid in his Speech, That the fundamental Laws of this Kingdom ſhould be maintained.

And becauſe the chief Ends of Parliaments are the Grievances of the Commonwealth, and the King's Supply,

He thought that Grievances and Subſidies, like Twins, as *Jacob* and *Eſau*, ſhould go Hand in Hand.

For though Grievances go firſt, yet the Bleſſing may be upon Subſidies.

And it would be an Encouragement to give the more bountifully and chearfully.

Then ſpake Sir *James Parrot*: I deſire not to hear myſelf ſpeak, nor to find Fault with other's Speeches, nor to oppoſe any Man's Speech.

If we differ from our Superiors, it ſhould be with Reverence, the Relief of the King and Subjects ſhould go both together; nay true Charity begins at Home, and then extends itſelf to others.

It is fit we ſhould know our Privileges.

I know not how far the late Proclamation extends.

The King (as we conceived) did in a ſort debar us from the Prerogative, State Matters, and Defence of Religion;

And therefore my Opinion is to ſend a Meſſage to the King, humbly deſiring that he would explain himſelf, becauſe elſe we may many Ways

Ways fall into Matters of State; I like not going to the Lords firſt, and after to the King: *Fruſtra fit per plura, &c.* He that will go to the Stream, when he may go to the Fountain, may have much Trouble, and yet miſs of his Purpoſe:

Some preſent can tell that we heretofore have been rejected by them, and who can tell whether we may again now?

And therefore I think it fit that a Committee may be choſen to ſet down how the Meſſage may be framed.

Next ſpake Sir *Julius Cæſar*, and ſaid, That he diſſented in Opinion from ſending any Meſſage to the King, who in his Speech gave us Liberty of Speech, ſo they ſpake dutifully, and not to his Diſhonour; and if they do otherwiſe, I hope the Houſe will take Order to have them puniſhed before it comes to the King's Ear.

Sir *Lyonel Crawfeild* thought not the Petition for Privileges fit, becauſe already granted:

The other for repreſſing Papiſts, and executing Laws againſt them, he thought neceſſary; and that the Supply and Grievances might go together Hand in Hand.

1. Conſider Liberty.
2. The Papiſts Number to be avoided.
3. The Good of the Kingdom.

In which conſider three Things.

1. Religion.
2. Juſtice.
3. Trade and Patents.

An Act of Parliament is above a Proclamation.

For 4 *Henry* VIII. all may ſpeak freely in Parliament, and not to be queſtioned.

Sir *Edward Cooke. Virtus in Convivio ſilere, vitium in Senatu*, and ſo ſpake earneſtly, that all Grievances of the Parliament in 7 *Jacobi*, might be executed againſt the Papiſts.

Next that the Liberty of the Houſe was one of the greateſt Things, that belonged to it; they were like a Circle, of which if any Part be broken, the whole is broken. And therefore it is dangerous to meddle with them.

Therefore he liked not of a Petition touching that Proclamation, for no Proclamation can be in Force againſt an Act of Parliament.

For the 4th of *Edward* III. is, That there ſhould be a Parliament every Year.

And the 34th of *Edward* III. That the Subjects ſhould ſpeak of their Grievances in Parliament.

And repeated the Caſe of *Stroade* 4 *Henry* VIII, Let Grievances be then ſpoken with Duty and Comlineſs, and what the true Cauſes of them are, and I ſhall be ready to further it; and if you ſhould begin with the Subſidies, yet let both Grievances and Subſidies end together, for they are like *Hippocrates*'s Twins: I did not think the Supply would now have been moved, but ſince it is, ſhall we deny to treat of it?

What will the Papiſts then ſay? They would not give the King Subſidy, being in ſo great Need.

But what?

Is the King in ſo great Miſery as if his Caſe were deſperate? There is no ſuch Matter, there is a Leak indeed that will ſhortly be ſtopped, and I know that if all the Water come home to the Mill that ſhould, the ordinary Charge and the ordinary Receipts would be near at one, and the Extraordinary of a King hath ever been born by his Subjects. I like that the Committee for Grievances, and the King's Supply, ſhould be of the whole Houſe, whereas the Grievances being laid down, it will be a good Encouragement to us to enable us to give a good Account of our Doings to our Country for whom we are intruſted.

Sir *Thomas Crew*. I ariſe not up to ſpeak againſt what hath been ſaid of going Hand in Hand; but for Order, my Advice is in two Things:

Firſt, In Matters of Religion, *a Jove principium*, that it may be intimated to his Majeſty by Petition or Signification, how inſolent Papiſts be, that in Hundreds they come to outface Religion, and ſuch as come from the Church.

We know that Images are but Traſh, but Artificers (which they were not wont to do) now ſet them out to affront us, as we paſs the Street.

And of the Jeſuit's Impunity, we are all ſenſible, I ſpeak not to draw Blood from any, but that they might be ſhut up as cloſe Priſoners, that ſo they might not give Intelligence what is done here.

The Statutes be only upon indicted and convicted Recuſants, but we requeſt his Majeſty to cleanſe the Town of all Recuſants.

We had Freedom of Speech laſt Parliament, yet we know what followed, yet we ſhould intreat his Majeſty that if any thing here be ſpoken amiſs, it may be here only cenſured, and not hereafter.

It is the Order of Parliaments, that Grievances go firſt, yet ſuch I find the Occaſions of Time, that I would ſet the Subſidies in the Front.

Which

Which being ended, it was agreed that there ſhould be a Committee of the whole Houſe to ſit in the Afternoon, to determine of theſe four Things:

Firſt, Whether a Petition to the King for the Liberties and Privileges of this Houſe were fit.

Secondly, Whether fit to petition the King for ſome Reſtraint, and more ſevere Execution of the Laws againſt Recuſants for our Safety.

Thirdly, What was fit to be done touching the King's Supply.

Fourthly, What concerning the Subjects Grievances.

And ſo they aroſe.

After Dinner, the Committee being aſſembled, they called upon Sir *Gerrard Cooke* to take the Chair at the Committee, which when, with ſome ſeeming Willingneſs, he had accepted,

Sir *Carew Raleigh* ſaid, That it was never ſeen that a Privy Counſellor was called to the Chair.

But anſwer was made, That being all Members of one Houſe there was no Difference, and therefore the Houſe might ſet upon any one whom they pleaſed.

Then the firſt Queſtion being alone propounded by Sir *Edward Cooke*, he deſired that they would not enter into any other until that were ended.

Which was agreed.

Then ſpake Sir *Robert Philipps*, ſaying, That nothing was more to be ſtood upon than our Privileges; and for that this might concern the Lords, as well as us, he thought fit that we reſolved to preſent this common Caſe unto them, that ſo they might join with us that ſome Act of Parliament might be made, whereby our Liberties and Privileges might be preſerved to Poſterity.

Mr. *Alford* ſpake againſt joyning with the Lords therein.

And Sir *Edward Gyles* aſked, Whether we could not go to the King without the Lords.

Mr. Secretary *Calvert* ſaid, You do well to ſtand upon your Privileges, though I ſee not yet how they are impeached, but if any doubt by reaſon of the Proclamation, I think it beſt to go to the King by Petition, although I think that Proclamation was intended againſt ſuch as make ordinary Table-Talk of State Matters in Taverns and Alehouſes, and not againſt Parliament Men.

Then

Then ſpake Mr. *Pawlet*,

I think nothing can derogate ſo much from this Houſe as to aſk leave to ſpeak, or to be limited what to ſpeak.

At length he agreed concerning this Propoſition with Mr. *Thomas Crew*, that ſpoke in the Forenoon to petition for Freedom of Speech, and if any ſhould ſpeak amiſs, that he might be puniſhed in the Houſe, and not otherwiſe.

Sir *Carew Raleigh* againſt this Petition.

Sir *Edward Cooke* ſaid, If you go to the King it muſt be by a Petition of Right, or of Grace; if of Right, you are not able to ſet them down, for it is dangerous to ſet them down to ſuſpect. Queſtion.

Sir *Edward Gyles* would have a Number of Men to go to the King without Petition, which was diſliked.

Sir *George More* ſaid, We ought not to queſtion our Privileges, but in Caſe of a Breach, as was ſuſpected the laſt Parliament.

Then ſtood up Sir *Robert Philipps*, and ſaid, If ever our Privileges were broken, it was the laſt Parliament, upon thoſe Men, who, the next Day after the Parliament was diſſolved, were diſſolved to the *Tower*.

And therefore he thought it fit to go to the Lords, that they might join with us, becauſe their Turn might be next by a Petition of Right for thoſe Privileges only which are ſuppoſed to have been broken, ſo applying the right Medicine to the right Sore.

But Sir *William Stroade* was againſt going to the Lords, ſaying, That it was a prepoſterous Courſe, becauſe this doth nothing belong unto them, but concerns this Houſe only. Which was agreed unto by the Houſe.

And what was fit to be ſet down was referred to a Sub-Committee, who were to report back to this Committee what they had done.

The Place appointed was the Court of *Wards*, the Time To-morrow in the Afternoon.

The ſecond thing referred to the Sub-Committee of the whole Houſe, was concerning Recuſants, for petitioning the King for more ſtrict Execution of the Laws againſt them (for now, as Sir *Edward Cooke* ſays, they were aſleep *in vagina*) and that ſome further Reſtraint of them might be made, eſpecially at this Time, wherein it was queſtioned,

Whether we ſhould go to the Lords, and deſire them to joyn with us and urge it to the King, which was agreed.

And

And (as Sir *John Bennet* ſaid) we had Precedents that the Lords had joined with us in the like.

Then was a Queſtion moved,

Whether a Committee might make a Sub-Committee:

Which was agreed.

And then it was to make Report to the ſame Committee that made it, what they had done, which being choſen, the Place was the Court of *Wards*.

The Time *Wedneſday* at Two of the Clock.

The other two Parts being Twins, it was not thought fit to enter upon, until Anſwer was brought from his Majeſty concerning Liberty of Speech.

The Sixth Inſtance.

SIR *Henry Poole*, That a Conference to be had in the *Painted Chamber* at Nine of the Clock, with twenty four of the Lords, and forty eight of the Commons; and Sir *Edward Coke* appointed to make the Report, and the Clerk's Book to be there.

Journal Dom. Com. 18, 19. Jacobi I. Saturday, December 1, 1621. *after the meeting of the Houſe upon an Adjournment. Concerning Sir* Edwyn Sandys's *Reſtraint.*

Mr. *Speaker*. If we ſhall ſuffer the Council Table to call in Queſtion ſuch as ſit here for Parliamentary Buſineſs, then farewell *England*; that which Mr. Secretary hath heretofore ſaid in excuſe of this Matter, That Sir *Edwyn Sandys* was not called in queſtion for any thing he did or ſaid in Parliament, ſatisfieth not me for theſe Reaſons:

Firſt, Becauſe that which was ſaid or done, was ſo done or ſaid in private, whereas Sir *Edwyn Sandys*'s Commitment is voiced throughout all *England*.

Secondly, Becauſe Mr. Secretary is a Party, and therefore no fit Perſon in this Caſe.

Therefore I deſire that ſome Members of this Houſe may be ſent to Sir *Edwyn Sandys*, to queſtion him of the Cauſe of his Commitment.

Sir *William Spencer*. That Sir *Edwyn Sandys* be ſent to, to ſend us word, Whether he were committed for Parliamentary Matters in the Houſe or not: For we are not only confined within theſe Walls with our Privileges, but in *Weſtminſter-Hall*.

Mr. *Mallorie.* We are intruſted for our Country.

If we loſe our Privileges, we betray it.

If we give way to this, we loſe our Privileges; and loſing them, we deſerve to be hanged.

Let us not look upon ourſelves only, but upon our Poſterities alſo.

Thoſe honourable Perſons that ſit about the Chair, know not whether their Poſterity ſhall be Privy Counſellors, or no.

Neither are they ſure that Children ſhall not be ſo ſerved.

I have heard it delivered in former Parliaments, That no Member of this Houſe, during the Seſſion, ſhould be queſtioned, except it were for Felony, Murther, or Treaſon.

Therefore I deſire, that Sir *Edwyn Sandys* may be ſent for; and if he cannot come, that he be required to ſet under his Hand, as he is a Gentleman, for what he was queſtioned.

Sir *William Spencer* ſaid, Our Privileges are broken, which are and ought to be dearer to us than our Lives.

Sir *Edwyn Sandys* (a worthy Member of this Houſe) hath been committed ſince the Adjournment.

The Speech of that honourable Perſon that ſpake touching this Matter, gave me no Satisfaction.

For he ſaid, It was not for any thing done or ſpoken in the Houſe; yet it may be for ſpeaking of Parliament Buſineſs out of the Houſe.

I would gladly know, Whether we are not as free to ſpeak in *Weſtminſter-Hall*, as here.

And, Whether we are a Parliament in the Forenoon, and not in the Afternoon.

Then farewell Privileges, and farewell *England!*

Chancellor of the *Dutchy.* I know his Majeſty's Proceedings in this Buſineſs; and I think he uſed more Moderation than any of us would have done in the like Caſe.

Sir *Henry Witherington.* I have heard this Buſineſs hath been queſtioned three Times before my coming up.

Better never queſtioned, than receive no Satisfaction.

They told me in the Country, you are as like to ſpeak as any Man: Take heed, you ſee what is become of Sir *Edwyn Sandys.*

You are brave Fellows whilſt you are together; but what becomes of you when you are parted?

My

My Counſel is, to ſend for Sir *Edwyn Sandys*; and if he be ſick, that he be required to make his Declaration of the Cauſe of his Impriſonment.

Sir *Samuel Sandys.* If Silence in Time of Neceſſity did not equally incur Blame with too much Loquacity, I ſhould have kept Silence at this Time:

But ſithence this Time and this Cauſe doth ſeem to call me up in particular, I crave your Patience to ſpeak what I know in this Buſineſs.

Something hath been ſpoken by way of Prevention of the King's Juſtice.

There is no Man goes about to lay any Imputation upon his Majeſty's Juſtice:

But we know, Princes judge not always by their Eyes, but by their Ears.

In the *Firſt* Place, They have care of their own Safety; and it beſeems their Wiſdoms, upon Jealouſies, to enter into Examination of ſuch as they ſuſpect.

And in the *Second* Place, Though I am very near unto him, yet I know not for what he was examined, I know not one Queſtion that was aſked him.

We have Liberty and Privilege, but not to deny Kings to be jealous of themſelves, and upon ſuch Jealouſies to examine ſuch as they ſuſpect.

The State thought fit to examine him; and then it was fit he ſhould be reſtrained, before he was examined, that ſo he might ſpeak his own Thoughts.

He wrote unto me this Week, that he was ſick, and could not do that Service to this Houſe which he deſired.

My humble Motion is, that the Buſineſs may reſt 'till he be able to come up, and then he may utter his own Thoughts.

And that in the mean time, you would not ſuſpect or be jealous of thoſe Proceedings which are juſt.

Sir *George Moore.* That Entry might be made in the Book, that after we are once elected, we ſhould maintain our Privileges.

Sir *Thomas Bellaſis.* That if he be not able to come, to ſignify if he were committed for Parliamentary Matters or no, or examined.

But the Houſe would not be ſatisfied.

It was ordered notwithſtanding, that Sir *Peter Hammon* and Mr. *Mallory* ſhould go to Sir *Edwyn Sandys* on *Monday*, to bring him to the

the Houſe if he were able, if not to require him to ſend a Declaration in Writing, Whether he were examined or committed for any Parliament Buſineſs or no?

MONDAY the 3d of *December*, 1621.

Sir *Edward Coke* made Report of the Proceedings of the Committee in the Matter of petitioning the King; and ſo the Petition was read in Form following:

Moſt gracious and dread Sovereign,

WE your Majeſty's moſt humble and loyal Subjects, the Knights, Citizens, and Burgeſſes, now aſſembled in Parliament, who repreſent the Commons of your Realm, full of heavy Sorrow to be deprived of the Comfort of your Royal Preſence; the rather for that it proceeds from the Want of your Health, wherein we all unfeignedly do ſuffer in all humble manner, calling to mind your gracious Anſwer to our former Petition concerning Religion, which, notwithſtanding your Majeſty's pious and princely Intentions, hath not produced that good Effect, which the Danger of theſe Times doth ſeem to us to require:

And finding how ill your Majeſty's Goodneſs hath been requited by Princes of different Religion, who even in Time of Treaty have taken Opportunity to advance their own Ends; tending to the Subverſion of Religion, and Diſadvantage of your Affairs and the Eſtate of your Children;

By reaſon whereof your ill affected Subjects at home (the Popiſh Recuſants) have taken too much Encouragement, and are dangerouſly increaſed in their Number, and in their Inſolencies, we cannot but be ſenſible thereof:

And therefore humbly repreſent what we conceive to be the Cauſes of ſo great and growing Miſchiefs, and what be the Remedies.

I. The Vigilancy and Ambition of the Popes of *Rome*, and his deareſt Son; the one aiming at as large a Temporal Monarchy, as the other at a Spiritual Supremacy.

II. The deviliſh Poſitions and Doctrines whereon Popery is built, and taught with Authority to their Followers, for Advancement of their Temporal Ends.

III. The diſtreſſed and miſerable Eſtate of the Profeſſors of true Religion in Foreign Parts.

IV. The

IV. The diſaſtrous Accidents to your Majeſty's Children abroad, expreſſed with Rejoicing and Contempt of their Perſons.

V. The ſtrange Confederacy of the Princes of the Popiſh Religion, aiming mainly at the Advancement of their's, and Subverting of our's, and taking the Advantage conducing to that End upon all Occaſions.

VI. The great and many Armies raiſed and maintained at the Charge of the King of *Spain*, the chief of that League.

VII. The Expectation of the Popiſh Recuſants of the Match with *Spain*, and feeding themſelves with the great Hopes of the Conſequences thereof.

VIII. The interpoſing of Foreign Princes and their Agents on the behalf of Popiſh Recuſants, for Connivance and Favour unto them.

IX. The open and uſual Reſort to the Houſes, and, which is worſe, to the Chapels of Foreign Embaſſadors.

X. Their more than uſual Concourſe to the City, and their frequent Conventicles and Conferences thereof.

XI. The Education of their Children in many ſeveral Seminaries and Houſes of their Religion in Foreign Parts, appropriated to the *Engliſh* Fugitives.

XII. The Grants of their juſt Forfeitures, intended by your Majeſty as a Reward of Service to the Grantees, but, beyond your Majeſty's Intention, transferred or compounded for at ſuch mean Rates as will amount to little leſs than a Toleration.

XIII. The licentious printing and diſperſing of Popiſh and Seditious Books, even in the Times of Parliament.

XIV. The Swarms of Prieſts and Jeſuits, the common Incendiaries of all *Chriſtendom*, diſperſed in all Parts of your Kingdom.

And from theſe Cauſes, as bitter Roots, We humbly offer to your Majeſty, that we foreſee and fear there will neceſſarily follow dangerous Effects both to Church and State. For,

Firſt, The Popiſh Religion is incompatible with ours, in reſpect of their Poſitions.

Secondly, It draweth with it an unavoidable Dependency on Foreign Princes.

Thirdly, It openeth too wide a Gap for Popularity to any who ſhall draw too great a Party.

Fourthly, It hath a reſtleſs Spirit, and will ſtrive by theſe Gradations. If it once get but a Connivance, it will preſs for a Toleration; if that ſhould be obtained, they muſt have an Equality: From thence they will aſpire to a Superiority; and it will never reſt, 'till they get a Subverſion of the True Religion.

The Remedy againſt theſe growing Evils, which in all Humility we offer unto your moſt Excellent Majeſty, are theſe:

I. That ſeeing this inevitable Neceſſity is fallen upon your Majeſty, which no Wiſdom or Providence of a peaceable and pious King can avoid, your Majeſty would not omit this juſt Occaſion to take your Sword into your Hand.

II. That once undertaken upon ſo honourable and juſt Grounds, your Majeſty would be reſolved to purſue and more publickly avow the Aiding of thoſe of our Religion in Foreign Parts; which doubtleſs would re-unite the Princes and States of the Union, by theſe Diſaſters diſheartened and diſbanded.

III. That your Majeſty would promiſe to yourſelf to manage this War with the beſt Advantage, by a Diverſion or otherwiſe, as in your deep Judgment ſhall be found fitteſt; and not to reſt upon a War in thoſe Parts only, which will conſume your Treaſure, and diſcourage your People.

IV. That the Bent of this War and Point of your Sword may be againſt that Prince (whatſoever Opinion of Potency he hath) whoſe Armies and Treaſures have firſt diverted, and ſince maintained the War in the *Palatinate*.

V. That, for ſecuring our Peace at Home, your Majeſty would be pleaſed to review the Parts of our Petition formerly delivered unto your Majeſty hereunto annexed; and to put in execution, by Care of choice Commiſſioners to be thereunto eſpecially appointed, the Laws already and hereafter to be made, for preventing of Dangers by Popiſh Recuſants, and their wonted Evaſions.

VI. That, to fruſtrate their Hopes for a future Age, our moſt Noble Prince may be timely and happily married to one of our own Religion.

VII. That the Nobility and Gentry of the Kingdom, and others ill affected and ſuſpected in their Religion, now beyond the Seas, may be forthwith called Home by your Means, and at the Charge of their Parents or Governours.

VIII. That the Children of Popiſh Recuſants, or ſuch whoſe Wives are Popiſh Recuſants, be brought up during their Minority, with Proteſtant School-maſters or Teachers, who may ſow in their tender Years the Seeds of True Religion.

IX. That your Majeſty will be pleaſed ſpeedily to revoke all former Licences for ſuch Children and Youth to travel beyond the Seas, and not to grant any Licence hereafter.

X. That your Majeſty's learned Council may receive Commandment from your Highneſs, carefully to look into former Grants of Recuſants Lands, and to avoid them, if by Law they can. And that your Majeſty will ſtay your Hand from paſſing any ſuch Grants hereafter.

This is the Sum and Effect of our humble Declaration, which we (no ways intending to preſs upon your Majeſty's undoubted and Regal Prerogative) do with the Fullneſs of our Duty and Obedience, ſubmit to your moſt princely Conſideration.

The Glory of God, whoſe Cauſe it is; the Zeal of our true Religion, in which we have been born, and wherein (by God's Grace) we are reſolved to dye; the Safety of your Majeſty's Perſon, who is the very Life of your People; the Happineſs of your Children and Poſterity, the Honour and Good of the Church and State, dearer unto us than our own Lives; having kindled theſe Affections truly devoted to your Majeſty.

And ſeeing, out of our Duty to your Majeſty, we have already reſolved to give at the End of the Seſſion one entire Subſidy for the Relief of the *Palatinate* only, to be paid in the End of *February* next; which cannot well be effected, but by paſſing of a Bill in a Parliamentary Courſe before *Chriſtmas*,

We moſt humbly beſeech your Majeſty (as our aſſured Hope is) that you will then alſo vouchſafe to give Life by your Royal Aſſent to ſuch Bills, as before that Time ſhall be prepared for your Majeſty's Honour and the general Good of your People.

And

And that ſuch Bills may be alſo accompanied, as hath been accuſtomed, with your Majeſty's gracious Pardon; which proceeding from your own mere Grace, may by your Highneſs's Direction be drawn to that Latitude and Extent, as may beſt ſuit with your Majeſty's Bounty and Goodneſs.

And that not only Felons and Criminals Offenders may take Benefit thereof, but that your good Subjects may receive Eaſe thereby.

And if it ſhall ſo ſtand with your good Pleaſure, that it may extend to the Relief of the old Debts and Duties to the Crown before the firſt Year of your Majeſty's Reign:

To the Diſcharge of Alienations without Licence, and miſuſing of Liveries and *Ouſtre le Maine*, before the firſt Summons of this Parliament; and of concealed Wardſhips, and not ſuing of Liveries and *Ouſtre le Maine*, before the twelfth Year of your Majeſty's Reign.

Which gracious Favour would much comfort your good Subjects, and eaſe them from Vexation, with little Loſs or Prejudice to your own Profit.

And we by our daily and devout Prayers to the Almighty, the great King of Kings, ſhall contend for a Bleſſing upon our Endeavours, and for your Majeſty's long and happy Reign over us, and for your Children's Children after you, for ſo many Generations.

TUESDAY the 4th of *December*, 1621.

His Majeſty's Letter to the Speaker.

To our truſty and well-beloved Sir Thomas Richardſon *Knight, Speaker of the Houſe of Commons.*

Mr. SPEAKER,

WE have heard by divers Reports, to our great Grief, that our Diſtance from the Houſe of Parliament, cauſed by our Indiſpoſition of Health, hath emboldened ſome fiery and popular Spirits of ſome of the Houſe of Commons, to argue and debate publickly about Matters far above their Reach and Capacity, tending to our great Diſhonour and Breach of Prerogative Royal.

Theſe are therefore to command you to make known in our Name unto the Houſe, that none therein ſhall preſume henceforth to meddle with any Thing concerning our Government or deep Matters of State; and namely, not to deal with our deareſt Son's Match with the Daughter of *Spain*, nor to touch the Honour of that King, or any other our Friends and Confederates:

And alſo not to meddle with any Man's Particulars, which have their due Motion in our ordinary Courts of Juſtice.

And

And whereas we hear they have ſent a Meſſage to Sir *Edwyn Sandys* to know the Reaſons of his late Reſtraint, you ſhall in our Name reſolve them, that it was not for any Miſdemeanor of his in Parliament.

But to put them out of Doubt of any Queſtion of that Nature that may ariſe among them hereafter:

You ſhall reſolve them in our Name,

That we think ourſelf very free and able to puniſh any Man's Miſdemeanor in Parliament, as well during their ſitting as after, which we mean not to ſpare hereafter upon any Occaſion of any Man's inſolent Behaviour there that ſhall be miniſtered unto us,

And if they have already touched any of theſe Points which we have forbidden in any Petition of theirs which is to be ſent unto us:

It is our Pleaſure that you tell them, That except they reform it before it come to our Hands, we will not deign the hearing or anſwering of it.

The King's Letter being thrice read, the Speaker aſked the Houſe if they would riſe:

Which they preſently did.

WEDNESDAY the 5th of *December*, 1621.

Mr. *Velbridge* ſaith, Let us leave Trade and Impoſitions, and ſpeak for Religion and the Privileges of the Houſe, let us petition and petition again, as we uſually do to God, and without ceaſing till he hear us. Journal. Dom. Com. 18 & 19 Jacobi I.

Sir *Robert Philipps*. How fortunate have we been in our Meeting, that we blanched the Buſineſs of Sir *Edwyn Sandys?* we gave two Subſidies ſo freely as we never did before.

To the end we did this was to the Glory of God, and Stability of the Kingdom, what is neceſſary now, we may juſtify our Proceedings, ſo as we always ſubmit ourſelves to his Majeſty, and look out Precedents in the very Caſe upon ſuch a Letter, and to maintain by our Precedents our Privileges.

Sir *Francis Seymour*. That the King in his Speech ſaid we ſhould have our ancient Privileges in ſpeaking, as anciently we have had.

That ſeeing we are to judge thoſe that do judge us, and we ſhall be counted diſhoneſt for doing our Duties:

That we petition to his Majeſty that we go into the Country, or be ſilent here; and that every one may clear himſelf, one by one, that he hath not ſpoken or declared this to his Majeſty.

Sir *George Moore.* We came as the Woman in the Goſpel, but to have touched the Hem of the Garment of the Prerogative.

Solomon told us if the Spirit of him that riſeth againſt thee doth yet trouble thee, do not leave it ſo; ſo we muſt not give over our Prayers, and to riſe and go away.

But let a Committee be choſen for to deliberate of this.

Mr. *Hackwell.* The Prerogative of Kings increaſe; but our Privileges are at an eternal ſtand. If Princes could live always, it might be otherwiſe.

I have ſeen three ſuch Storms, I can declare of one, as in the 5th of *Elizabeth* about ths Succeſſion, ſhe did gainſay it.

But after upon Petition ſhe gave them leave to ſpeak of it.

And ſo of Marriage in that Parliament:

But afterwards ſhe was contented.

So in the firſt Parliament about Impoſitions;

So ſent a Meſſage that we ſhould not meddle with it;

Yet afterwards willing.

So about Anſwer, that Mr. Speaker ſhould ſpeak punctually, which upon Letter he was unwilling, but afterwards was ſatisfied and gave Leave.

My Advice is,

Firſt, That a Committee be, and the Letter and Precedents be produced.

Secondly, To give Satisfaction to the King by Petition.

Thirdly, To ſhew ſuch Precedents as may give his Majeſty Satisfaction.

That every one may have Copies of the Letter and Petitions to be ſent to his Majeſty.

Mr. *Prynne.* That we may not make the Wound wider, but rather lay Balme on it, and give Satisfaction; and thoſe that have brought us into Diſcredit, we may bring them into Diſcredit, ſaving our Reputations.

Sir *Edward Coke.* We had a glorious Beginning, and I pray we may end ſo; I have not conferred with any, but I do not ſay it is unlawful:

Nay, it is moſt lawful, and it hath been my Fault to bear a great Burthen.

Let us take from ourſelves afore we go about our Labour.

There is nothing ſpoken in the Letter againſt the Papiſts but juſtly.

I would his Sacred Majeſty had heard it.

For

For Matter of War, we were induced into it by the Lord's Speech:

We muſt not ſpeak of any thing, and not of thoſe Things which are within the Courts of Juſtice.

The firſt Seſſion of the King he was very angry they took this Courſe, and I would have us follow it, to ſtrengthen ourſelves with ſubſtantial Precedents, which we would rely upon, and a Narration that we have done in this Houſe.

Mr. *Pymme.* When any here hath propounded any thing, when the Houſe doth deſire that Courſe to be taken, it is not the Fault of him but of the Houſe; for when he is not puniſhed it is the publick Fault, and that the King would not deny that Inſtance, which he doth not deny to any one.

Sir *Dudley Diggs.* I have ſome better Hopes than afore, that if in the War and Marriage any have done amiſs, that by an Act it may be confeſſed, if not juſtified.

For the laſt Seſſions he could have ſpoken as much as we did ſpeak now, but that we have been incited by the Narration of the Lords.

Mr. *Crew.* That we may ſet down the Reaſons and Inducements that carried us to preſent this Petition, and the Petition itſelf, that the King may judge we never intended to meddle with Prerogative, though in ſome Caſes we may.

That all the laſt Seſſions we did not, which is remarkable;

If we may not go to God at any Time with our Petitions;

Then to the King;

And to uſe Inducements and Precedents to ſatisfy his Majeſty in the Title, that whe ould not be over-ruled by Will, where he could not be convinced by Reaſon.

In *Henry* the Third, and *Edward* the Third's Time, there was the like Queſtions:

For *Henry* III, the famous *Juſtinian* of his Time, 24 *Henry* III, they petitioned upon the Prerogative which they uſed, and ſpoke of:

And he was angry, but yet ſatisfied again.

Mr. *Wentworth.* That this is no new thing, 38 *Edward* III, 38 *Henry* VIII, for Puniſhment of thoſe that miſinform the King:

For every one would have Satisfaction, much more the King, to have a Match with thoſe that are our greateſt Enemies.

Sir

Sir *William Stroade.* If it may be juſtified, as it may, and that it be read, and the Points we have concluded upon, and every one to ſpeak, who hath miſinformed the King, rather to make an Excuſe than to juſtify our Proceedings concerning Matters of State, and not to handle Matters of Government, I think we may, but not in Miſteries of State, as Marriage, unleſs it be committed unto us.

Sir *Thomas Wentworth.* That a Committee be choſen to draw up a Remonſtrance of Precedents, but he diſſenteth from them as in the Marriage of his Son, that the King is free and able to puniſh any Man's Inſolence; but in the Parliament, or after a Remonſtrance of our Privileges, not by Diſpute but by Declaration, but this will ſtay our Seſſion, and to have that go on though theſe things ſleep.

Mr. *Brooke.* That in the Petition we had care on Religion for our Souls, not Bodies, as the Inſolencies and ſeducing of us by the Embaſſadors and their Servants:

There was no Arguments about the Marriage uſed, I think we did well, and are not faulty.

There is a Precedent about diſputing upon Impoſitions.

The King ſent us a Letter:

We made a Remonſtrance, and he was ſatisfied, and we reaſoned after of it with his Will and Liking.

That a Committee be choſen to conſider of it.

Sir *Robert Philipps.* We ſpake not of the Match with *Spain* in the firſt Seſſions, but the Way was traced out to us by the Lords; and not to excuſe it, for I do not acknowledge yet an Error.

Therefore I think it fit to juſtify it by Reaſon and Precedents, and that is ſeaſonable for a Committee; firſt of Reaſon or Precedents of thoſe that know them beſt to ſatisfy his Majeſty, and reſpite all Buſineſs whatſoever.

Sir ——— *Aſhley.* That we ſhew to his Majeſty that we have not been wronged by Miſinformation in moſt humble-wiſe.

Firſt, That we ſhould not detract from it, or qualify it; and that if any were guilty, that we would puniſh him for ſpeaking it againſt himſelf.

The King hath his Council but in *arduis rebus*, that is the Council of State, in theſe urgent Buſineſſes, for they have ſaid that we ſhould have a Toleration in Religion.

Secondly, That our Liberties of Speech may be free, elſe we ſhall loſe our Privileges.

And

And *Thirdly*, That we have always puniſhed thoſe that ſhall ſpeak undutifully.

Sir *Edward Coke* ſaith, *Firſt* will he have Wars with *Spain*, and a Marriage.

Secondly, Our giving of two Subſidies.

Thirdly, The Petition to be annexed as a Narration that we have done.

Fourthly, An humble Apology for what we have done, like the other in the firſt Parliament.

Mr. *Alford*. That there be three Committees, and all to have Voices, and all to ſpeak that will come.

Sir *George Moore*. That we ſhall ſet down a Reaſon for what we have done, and for our Privileges to juſtify what we have done.

THURSDAY, the 6th of *December*, 1621.

Mr. *Noy* moved three Things:

Firſt, To ſet the Houſe ſtraight with the King.

Secondly, To juſtify what we have done.

Thirdly, To maintain the Privileges.

A Sub-Committee of twenty or more, and they to nominate fourteen:

The Sub-Committee to ſet down what they had determined in Writing, having the Letter and Petition which was read at the Sub-Committee in the Court of *Wards*. The Tenor whereof followeth:

Moſt dread and gracious Sovereign,

WE your moſt humble and loyal Subjects, the Knights, Citizens, and Burgeſſes aſſembled in the Commons Houſe of Parliament, full of Grief and unſpeakable Sorrow through the Senſe of your Majeſty's Diſpleaſure, expreſſed by your Letter lately ſent unto our Speaker, and by him related and read unto us; yet comforted again with the Aſſurance of your Grace and Goodneſs, and of the Sincerity of our own Intentions and Proceedings, wherein with Confidence we can rely,

In all Humbleneſs beſeeching your moſt excellent Majeſty, that the Loyalty and Dutifulneſs of as faithful and loving Subjects as ever ſerved or lived under a gracious Sovereign, may not undeſervedly ſuffer by the Miſinformation of partial and uncertain Reports, which ever are unfaithful Intelligencers.

But that your Majeſty would in the Clearneſs of your own Judgment, firſt vouchſafe to underſtand from ourſelves, and not from others, what our humble Declaration and Petition (reſolved upon by the univerſal Voice of the Houſe, and propoſed by your gracious Favour to be preſented unto your ſacred Majeſty) doth contain.

Upon what Occaſion we entered into the Conſideration of thoſe Things which are therein contained, with what dutiful Reſpects to your Majeſty and your Service we did conſider thereof, and what was our true Intention thereby.

And when your Majeſty ſhall truly thereby diſcern our dutiful Affections, you will in your Royal Judgment free us from thoſe heavy Charges wherewith ſome of our Members are burdened, and wherein the whole Houſe is involved.

And we humbly beſeech your Majeſty, that you would not hereafter give Credit to private Reports againſt all or any of the Members of our Houſe, whom the whole have not cenſured, until your Majeſty have been truly informed thereof from ourſelves.

And that in the mean Time, and ever, we may ſtand upright in your Majeſty's Grace and good Opinion, than which no worldly Conſideration is, or can be, dearer unto us.

When your Majeſty had aſſembled us in Parliament, by your Royal Commandment, ſooner than we expected, and did vouchſafe by the Mouths of three honourable Lords to impart to us the weighty Occaſions moving your Majeſty thereunto, and from them we did underſtand theſe Particulars,

That notwithſtanding your princely and pious Endeavours to procure Peace, the Time is now come that *Janus*'s Temple muſt be opened:

That the Voice of *Bellona* muſt be heard, and not the Voice of the Turtle:

That there was no Hope of Peace or Truce to be obtained, no not for a few Days:

That your Majeſty muſt either abandon your own Children, or ingage yourſelf in a War, wherein Conſideration is to be had, what Foot, what Horſe, what Money will be ſufficient:

That the *Lower Palatinate* was ſeized upon by the King of *Spain*'s Army, and as Executors of the Ban there in Quality of the Duke of *Burgundy*, as the *Upper Palatinate* was by the Duke of *Bavaria*:

That the King of *Spain*, at his own Charge, had now at leaſt five Armies on Foot:

That the Princes of the Union were diſbanded, but the Catholick League remained firm, whereby thoſe Princes ſo diſſever'd were in danger, one by one, to be ruined:

That

That the Eſtate of thoſe of the Religion in Foreign Parts was miſerable, and that out of theſe Conſiderations we are called to a War, and forthwith to adviſe for a Supply for keeping the Forces in the *Palatinate* from diſbanding, and to foreſee the Means for raiſing and maintaining the Body of an Army for a War againſt the Spring:

We therefore out of our Zeal to your Majeſty and your Poſterity, with more Alacrity and Celerity than ever was precedented in Parliament, did addreſs ourſelves unto the Service commended to us.

And although we cannot conceive that the Honour and Safety of your Majeſty, and your Poſterity, the Patrimony of your Children invaded, and poſſeſſed by their Enemies,

The Welfare of your Religion and Kingdom, are Matters at any Time unfit for our deepeſt Conſideration in Time of Parliament; yet being now invited thereunto, and led on by ſo juſt an Occaſion,

We thought it our Duty to provide for the preſent Supply thereof, and not only to turn our Eyes on a War Abroad, but to take Care for the Security of our Peace at Home, which the dangerous Increaſe and Inſolence of Popiſh Recuſants apparently, viſibly, and ſenſibly did lead us unto.

The Conſideration whereof did neceſſarily draw us truly to repreſent unto your Majeſty what we conceive to be the Cauſes, what we feared would be the Effects, and what we hoped might be the Remedy of thoſe growing Evils.

Amongſt which, as being incident and unavoidable, we fell upon ſome Things which ſeem to touch upon the King of *Spain*, as they have relation to Popiſh Recuſants at Home, to the Wars by him maintained in the *Palatinate* againſt your Majeſty's Children, and to his ſeveral Armies now on Foot.

Yet as we conceived without touch of Diſhonour to that King, or any other Prince your Majeſty's Confederate.

In the Diſcourſe whereof we did not aſſume to ourſelves any Power to determine of any Part thereof, nor intend to encroach or intrude upon the ſacred Bounds of your Royal Authority, to whom, and to whom only, we acknowledge it doth belong, to reſolve of Peace and War, and of Marriage of the moſt noble Prince your Son.

But as your moſt loyal and humble Subjects and Servants, repreſenting the whole Commons of your Kingdom (who have a large Intereſt in the happy and proſperous Eſtate of your Majeſty and your Royal Poſterity, and of the flouriſhing Eſtate of our Church and Common-Wealth) did reſolve, out of our Cares and Fears, truly and plainly to demonſtrate theſe Things to your Majeſty, which we were not aſſured could otherwiſe come ſo freely and clearly to our Knowledge.

And that being done, to lay the ſame down at your Majeſty's Feet, without Expectation of any other Anſwer of your Majeſty touching theſe higher Points, than what as your good Pleaſure and in your own Time ſhould be held fit.

This being the Effect of what we had formerly reſolved upon, and theſe the Occaſions and Reaſons inducing the ſame;

Our humble Suit to your Majeſty and Confidence is, That your Majeſty will be graciouſly pleaſed to receive at the Hands of theſe our Meſſengers, our former humble Declaration and Petition, and vouchſafe to read, and favourably to interpret the ſame:

And that ſo much thereof, as containeth our humble Petition, concerning Jeſuits, Prieſts and *Romiſh* Recuſants, the paſſing of Bills, and granting your Royal Pardon, you will vouchſafe an Anſwer unto us.

And whereas your Majeſty, by the general Words of your Letter, ſeemeth to reſtrain us from the intermeddling with Matters of Government, or Particulars which have their Motion in the Courts of Juſtice; the Generality of which Words, in the Largeneſs of the Extent thereof (as we hope beyond your Majeſty's Intention) might involve thoſe Things which are the proper Subjects of Parliamentary Occaſions and Diſcourſe:

And whereas your Majeſty doth ſeem to abridge us of the ancient Liberty of Parliament for Freedom of Speech, Juriſdiction, and juſt Cenſure of the Houſe, and other Proceedings there (wherein we truſt we ſhall never tranſgreſs the Bounds of loyal and dutiful Subjects) a Liberty which we aſſure ourſelves, ſo wiſe and ſo juſt a King will not infringe;

The ſame being our ancient and undoubted Right, and an Inheritance received from our Anceſtors, without which we cannot freely debate, nor freely diſcern of Things in Queſtion before us, nor truly inform your Majeſty;

In which we have been confirmed by your Majeſty's moſt gracious former Speeches and Meſſages:

We are therefore now again enforced in all Humbleneſs to pray your Majeſty to allow the ſame, and thereby to take away the Doubts and Scruples your Majeſty's late Letter to our Speaker hath wrought upon us.

So ſhall we your loyal and loving Subjects ever acknowledge your Majeſty's Juſtice, Grace and Goodneſs, and be ready to perform that Service to your Majeſty, which in the true Affection of our Hearts we profeſs, and pour out our daily and devout Prayers to the Almighty, for long Life, happy and religious Reign, and proſperous Eſtate, and for your Royal Poſterity over us for ever.

WEDNESDAY the 12th of *December*, 1621.

Mr. Secretary was commanded by his Majeſty to deliver this Meſſage by Word of Mouth, which he did; but after, by Appointment of the Houſe, ſet it down in Writing in theſe Words, *viz.*

His Majeſty, remembering that this Houſe was deſirous to have a Seſſion between this and *Chriſtmas*; Whereupon it pleaſed him to ſignify unto us, that we ſhould have Contentment therein, and that there ſhould be a Seſſion, if we ourſelves were not in the Fault; taking now notice, that the Houſe forbears to proceed with any Bills, 'till the Return of the Meſſengers lately ſent unto his Majeſty, hath enjoined me to command the Houſe in his Name, not to loſe Time in their Proceedings for preparing of good Laws in the mean while, in conſideration of this ſo near Approach of *Chriſtmas*; and that his Majeſty hopes they will not take upon them to make a Receſs in Effect, though not in Shew, without his Warrant.

Sir *Robert Phillips*. That we are put upon Rocks, either to diſcontent his Majeſty, or loſe our Privileges.

That we chuſe a Committee to conſider of theſe Things.

To which Sir *Francis Seymour* joineth.

Maſter of the *Rolls*. That we may go on with Continuance and Repeal of Statutes, and not read Bills 'till you have an Anſwer.

So we ſhall ſatisfy ourſelves, and not diſobey his Majeſty's Commands in preparing of Bills.

For ſo is the King's Meſſage.

Mr. *Crew*. We muſt obey the King, and yet maintain our Privileges.

We are in a Dilemma, as in Sir *Francis Goodwin* being duly elected, and Sir *Thomas Parry* ſate here and was put out: But the King being miſinformed, ſent us a Meſſage; yet afterwards he was ſatisfied, and we went on with a great number of Bills in the Higher Houſe.

If we ſhould go on with others, they will hinder the Reſidue; and troubled Thoughts will hinder our Judgments in theſe Buſineſſes; and therefore that there be a Committee.

Mr. *Glanvile*. That we be conſtant to ourſelves; and ſome will ſay, That we muſt not go on but with Bills, if the King command us: So we ſhall not hold our Privileges.

That it may be committed.

FRIDAY the 14th of *December*, 1621.

His Majeſty's Anſwer to the Apologetique Petition of the Houſe of Commons; preſented to his Majeſty by a Dozen of our Houſe of Commons.

WE muſt here begin in the ſame Faſhion that we would have done if the firſt Petition had come to our Hands, before we had made a Stay thereof, which is to repeat the firſt Words of the late Queen, of famous Memory, uſed by her in Anſwer to an inſolent Propoſition made by a *Polonian* Embaſſador unto her; that is,

Legatum expectabamus, Heraldum accipimus.

For we had Reaſon to expect, that the firſt Meſſage from your Houſe ſhould have been a Thankſgiving for our continued gracious Behaviour towards our People, ſince your laſt Receſs, not only by our Proclamation of Grace, wherein were contained ſix or ſeven and thirty Articles of ſeveral Points of Grace to the People: But likewiſe for the Labour we took for the Satisfaction of both Houſes in theſe three Articles recommended unto us in both their Names, by the Right Reverend Father in God the Archbiſhop of *Canterbury*; and likewiſe for the good Government of *Ireland* we are now in hand with at your Requeſt.

But not only have we heard no News of all this, but contrary, great Complaints of the Danger of Religion within this Kingdom, tacitly implying our ill Government in this Point.

And we leave you to judge, Whether it is your Duties, that are the Repreſentative Body of our People, ſo to diſtaſte them with our Government:

Whereas by the contrary, it is your Duty with all your Endeavours to kindle more and more a dutiful and thankful Love in the People's Hearts towards us, for our juſt and gracious Government.

And whereas in the very Beginning of this your Apology, you tax us in fair Terms of truſting uncertain Reports and partial Informations concerning your Proceedings;

We will you to remember, That we are an old and experienced King, needing no ſuch Leſſons, being in our Conſciences freeſt of any King alive from hearing or truſting idle Reports; which ſo many of your Houſe as are neareſt unto us can bear Witneſs unto you, if you would give as good Ear to them as you do to ſome Tribunal Orators amongſt you.

And for Proof in this Particular, we have made your own Meſſengers confer your other Petitions ſent by you, with the Copies thereof, which was ſent before:

Between

Between which there is no Difference at all, but that ſince our receiving the firſt Copy you added a Concluſion to it, which could not come to our Hands, 'till it was done by you and your Meſſengers ſent, which was all at one Time.

And if we had one Copy of it before-hand, we muſt have received your firſt Petition to our great Diſhonour, before we had known what it contained; which would have enforced us to have returned you a far worſe Anſwer than we now do.

For then your Meſſengers had returned with nothing, but that we have judged your Petition unlawful, and unworthy of an Anſwer.

For as to your Concluſion thereof, it is nothing but *Proteſtatio contraria facto.*

For in the Body of your Petition you uſurp upon the Prerogative Royal, and meddle with Things far above your reach.

And then, in the Concluſion, you proteſt the contrary: As if a Robber would take a Man's Purſe, and meant not to rob him.

For firſt you pretend to give us your Advice, concerning the Match of our deareſt Son with ſome Proteſtant (we cannot ſay Princeſs, for we know none of thoſe fit for him) and diſſuade us from his Match with *Spain*, urging to us a preſent War with that King:

And yet in the Concluſion, forſooth, ye proteſt, not to preſs upon an Undoubted and Regal Prerogative; as if the petitioning of us in Matters which yourſelves confeſs ye ought not to meddle with, were not a meddling with them.

And whereas ye pretend that ye were invited to this Courſe by the Speeches of three honourable Lords, yet by ſo much as yourſelves repeat of the Speeches, nothing can be concluded, but that we were reſolved by War to regain the *Palatinate*, if otherwiſe we could not attain to it.

And you were invited forthwith to adviſe upon a Supply for keeping the Forces in the *Palatinate* from diſbanding, and to foreſee the Means for the raiſing and maintainance of the Body of an Army for that War againſt the Spring.

Now, what Inference can be made upon this? That therefore we muſt preſently denounce War againſt the King of *Spain*, break our deareſt Son's Match, and match him to one of our Religion? Let the World judge, the Difference is no greater, than if we would tell a Merchant, That we had great need to borrow Money from him for raiſing an Army; that thereupon it would follow, that we were bound to follow his Advice in the Direction of the War and all Things depending thereupon.

But yet, not contenting yourſelves with this Excuſe of yours, which indeed cannot hold Water, ye come afterward to a direct Contradiction to the Concluſion of your former Petitions, ſaying, That the Honour

and

and Safety of us and our Poſterity, and the Patrimony of our Children invaded and poſſeſſed by their Enemies, the Welfare of Religion and State of our Kingdom, are Matters at any Time not unfit for your deepeſt Conſiderations in Parliament.

To this Generality we anſwer with the Logicians, That where all Things are contained, nothing is omitted.

So as this Plenipotency of yours inveſts you in all Power upon Earth, lacking nothing but the Pope's, to have the Keys alſo both of Heaven and Purgatory.

And to this vaſt Generality of yours we can give no other Anſwer: For it will trouble all the beſt Lawyers in the Houſe to make a Commentary upon it.

For ſo did the Puritan Miniſters in *Scotland* bring all Kind of Cauſes within the Compaſs of their Juriſdiction, ſaying, That it was the Church's Office to judge of Slander; and there could no Kind of Fault or Crime be committed, but there was a Slander in it, either againſt God, the King, or their Neighbour: And by this Means they hooked into themſelves the Cognizance of all Cauſes.

Or like *Bellarmine*'s Diſtinction of the Pope's Power over Kings, *in Ordine ad Spiritualia:* Whereby he gives them all Temporal Juriſdiction over them.

But, to give you a direct Anſwer to the Matter of War, for which you are ſo earneſt;

We expect you ſhould rather have given us Thanks for the ſo long maintaining of a ſettled Peace in all our Dominions; whereas all our Neighbours about are in a miſerable Combuſtion of War, but, *dulce Bellum inexpertis.*

And we indeed find by Experience, That a Number of our Subjects are ſo pampered with Peace, as they are deſirous of Change, tho' they knew not what.

It is true, that we have ever profeſſed (and in that Mind with God's Grace we will live and dye) That we will labour by all Means poſſible, either by Treaty or by Force, to reſtore our Children to their ancient Dignity and Inheritance.

And whatſoever Chriſtian Princes or Potentates will ſet themſelves againſt it, we will not ſpare any lawful Means to bring our ſo juſt and honourable Purpoſe to a good End:

Neither ſhall the Match of our Son, nor any other worldly Reſpect, be preferred to this our Reſolution.

For by our Credit and Intervention with the King of *Spain*, and the Arch-Ducheſs and her Huſband (now with God) we preſerved the *Lower Palatinate* one whole Year from any farther Conquering in it, which in eight Days Space in that Time might have eaſily been ſwallowed up by *Spinola*'s Army without any Reſiſtance.

And

And in no better Caſe was it now at our Ambaſſador the Lord *Digby*'s coming through *Heidelberg*, if he had not extraordinarily ſuccoured it.

But becauſe we perceive that ye couple this War of the *Palatinate* with the Cauſe of Religion, we muſt a little unfold your Eyes herein.

The Beginning of this miſerable War, which hath ſet all Chriſtendom on Fire, was not for Religion, but only cauſed by our Son in Law, his haſty and harſh Reſolution (following evil Counſel) to take to himſelf the Crown of *Bohemia*.

And that this is true, he himſelf wrote Letters unto us at that Time, deſiring to give Aſſurance both to the *French* King and State of *Venice*, that his accepting the Crown of *Bohemia* had no reference to the Cauſe of Religion, but only by reaſon of his Right of Election (as he called it). And we would be ſorry that that Aſperſion ſhould come upon Religion, as to make it a good Pretext for dethroning of Kings, and uſurping their Crowns.

And we would be loth that our People here ſhould be taught that ſtrange Doctrine.

No; let us not ſo far wrong the Jeſuits, as to rob them of their ſweet Poſitions and Practice in that very Point.

And upon the other Part, we aſſure ourſelf ſo far of your charitable Thoughts, that we would never have conſtantly denied our Son in Law, both the Title and Aſſiſtance in that Point, if we had been well perſuaded of the Juſtneſs of his Quarrel.

But to conclude; this unjuſt Uſurpation of the Crowns of *Bohemia* and *Hungaria*, from the Emperor, hath given the Pope and all that Party too fair a Ground, and opened too wide a Gate for curbing and oppreſſing many thouſands of our Religion in divers Parts of Chriſtendom.

And whereas you excuſe your touching upon the King of *Spain*, upon occaſion of the Incidents by you repeated in that Place, and yet affirm, that it is without any touch to his Honour;

We cannot wonder enough, that ye are ſo forgetful both of your Words and Writs.

For in your former Petition ye plainly affirm, that he affects the Temporal Monarchy of the whole Earth; than which there can be no more Malice uttered againſt any great King, to make all other Princes and Potentates to hate him.

But if ye liſt, it may be eaſily tried, whether that Speech touch him in Honour, or not; if ye ſhall aſk him that Queſtion, Whether he means to aſſume to himſelf that Title, or no: For every King can beſt judge of his own Honour.

We omit the particular Ejaculations of ſome foul-mouthed Orators in your Houſe, againſt the Honour of that King's Crown and State.

And touching your Excuſe of not determining any thing concerning the Match of our deareſt Son, but only to tell your Opinion, and lay it down at our Feet;

Firſt, We deſire to know, how you could have preſumed to have determined in that Point without committing of High Treaſon.

And next, you cannot deny but your talking of his Match after that Manner, was a direct Breach of our Commandment and Declaration out of our own Mouth, at the firſt ſitting down of this Parliament; where we plainly profeſſed, that we were in Treaty of this Match with *Spain*, and wiſhed you to have that Confidence in our Religion and Wiſdom, that we would ſo manage it, as our Religion ſhould receive no Prejudice by it.

And the ſame we now repeat unto you, profeſſing, that we are ſo far engaged in that Match, as we cannot in Honour go back, except the King of *Spain* perform not ſuch Things, as we expect at his Hands.

And therefore we are ſorry that ye ſhould ſhew to have ſo great Diſtruſt in us, as to conceive that we ſhould be cold in Religion.

Otherwiſe we cannot imagine how our former publick Declaration ſhould not have ſtopped your Mouths in this Point.

And as to your Requeſt, that we would now receive your former Petition;

We wonder what could make you preſume that we would receive it.

Whereas in our former Letter we plainly declared the contrary unto you:

And therefore we have juſtly rejected that Suit of your's.

For what have you left unattempted in the higheſt Point of Sovereignty, in that Petition of your's, except the ſtriking of Coin?

For it contains the Violation of Leagues, the particular Way how to govern a War; and the Marriage of our deareſt Son, both negative with *Spain*, nay with any other *Popiſh* Princeſs; and alſo affirmatively, as to the matching with one of our Religion: Which we confeſs is a Strain beyond any Providence or Wiſdom God hath given us, as Things now ſtand.

Theſe are unfit Things to be handled in Parliament, except your King ſhould require it of you.

For who can have Wiſdom to judge of Things of that Nature, but ſuch as are acquainted with the Particulars of Treaties: And of the variable and fixed Connexion of Affairs of State, together with the

Knowledge of the ſecret Ways, Ends, and Intentions of Princes in their ſeveral Negotiations:

Otherwiſe a ſmall miſtaking of Matters of this Nature may produce more Effects than can be imagined.

And therefore, *Ne ſutor ultra Crepidam.*

And beſides, the intermeddling in Parliament with Matters of Peace or War, and Marriage of our deareſt Son, would be ſuch a Diminution to us, and to our Crown, in Foreign Countries, as would make any Prince neglect to treat with us, either in Matters of Peace or Marriage, except they might be aſſured by the Aſſent of Parliament.

And ſo it proved long ago with a King of *France*, who, upon a Trick, procuring his States to diſſent from ſome Treaties, which before he had made, was after refuſed treating with any other Princes, to his great Reproach, unleſs he would procure the Aſſent of his Eſtates to their Propoſition.

And will you caſt your Eye upon the late Times, you ſhall find, that the late Queen of famous Memory was humbly petitioned by a Parliament to be pleaſed to marry:

But her Anſwer was, That ſhe liked their Petition well, becauſe it was ſimple, not limiting her to Place or Perſon, as not befitting her liking to their Fancies.

And if they had done otherwiſe, ſhe would have thought it a high Preſumption in them.

Judge then what we may do in ſuch a Caſe, having made our publick Declaration already (as we ſaid before) directly contrary to that which you have now petitioned.

Now to the Points in your Petition, whereof you deſire an Anſwer, as properly belonging to the Parliament.

The firſt and greateſt Point is that of Religion, concerning which, at this Time we can give you no other Anſwer than in the general, which is, that you may reſt ſecure, that we will never be weary to do all we can for the Propagation of our Religion, and for repreſſing of Popery: But the Manner and Form you muſt remit to our Care and Providence, who can beſt conſider of Times and Seaſons, not by undertaking a publick War of Religion through all the World at once (which how hard and dangerous a Taſk it may prove, you may judge) but this puts us in Mind how all the World complained laſt Year of plenty of Corn.

And God ſent us a cooling Card this Year for that Heat.

And ſo we pray God that this Deſire amongſt you of kindling Wars (ſhewing your Wearineſs of Peace and Plenty) may not make God permit us to fall into the Miſeries of both:

But

But as we already ſaid, our Care of Religion muſt be ſuch as, on the one Part, we muſt not, by the hot Perſecution of our Recuſants at Home, irritate foreign Princes of contrary Religion, and teach them the way to plague the Proteſtants in their Dominions with whom we daily intercede, and at this Time principally for Eaſe to them of our Profeſſion that live under them:

Yet on the other Part, we never mean to ſpare from due and ſevere Puniſhment, any Papiſt that will grow inſolent for living under our ſo mild Government.

And you may alſo be aſſured, we leave no Care undertaken as well for the good Education of the Youth at Home, and eſpecially the Children of the Papiſts, as alſo for preſerving at all Times hereafter the Youth that are or ſhall be abroad, from being bred in dangerous Places, and ſo poyſoned in Popiſh Seminaries.

And as in this Point, namely, the good Education of Popiſh Youth at home, we have already given ſome good Proofs, both in this Kingdom and in *Ireland*;

So we will be well pleaſed to paſs any good Laws that ſhall be made now, or at any Time hereafter to this Purpoſe.

And as to your Requeſt of making this a Seſſion, and granting a general Pardon, it ſhall be in your own Defaults if we make not this a Seſſion before *Chriſtmas*.

But for the Pardon, ye crave ſuch Particulars in it, as we muſt be well adviſed upon, leſt otherwiſe we give ye back the double or treble of that we are to receive by your entire Subſidy without Fifteenths.

But the ordinary Courſe we hold fitteſt to be uſed ſtill in this Caſe is,

That we ſhould of our firſt Grace ſend you down a Pardon from the Higher Houſe, containing ſuch Points as we ſhall think fitteſt, wherein we hope ye ſhall receive good Satisfaction.

But we cannot omit to ſhew you how ſtrange we think it that ye ſhould make ſo bad and unjuſt a Commentary upon ſome Words of our former Letter, as if we meant to reſtrain you thereby of your ancient Privileges and Liberties in Parliament:

Truly a Scholar would be aſhamed ſo to miſplace and miſguide any Sentences in another Man's Book.

For whereas in the end of our former Letter we diſcharge you to meddle with Matters of Government and Myſteries of State, namely, Matters of War or Peace, or our deareſt Son's Match with *Spain*, by which particular Denominations we interpret and reſtrain our former Words:

And then we after forbid you to meddle with ſuch Things as have their ordinary Courſe in Courts of Juſtice:

Ye

Ye couple together theſe two diſtinct Sentences, and plainly leave out theſe Words of Myſteries of State, ſo as ye err *a bene diviſis ad male conjuncta.*

For of the former Part concerning Myſteries of State, we plainly reſtrain our Meaning to the Particulars that after were mentioned.

And in the latter we confeſs we meant it by Sir *Edward Coke*'s fooliſh Buſineſs, and therefore it had well become him, eſpecially being our Servant, and one of our Council, to have complained unto us, which he never did, though he was ordinarily at Court ſince, and never had Acceſs refuſed to him.

And although we cannot allow of the Style, calling it your ancient and undoubted Right and Inheritance, but could rather have wiſhed that ye had ſaid, that your Privileges were derived from the Grace and Permiſſion of our Anceſtors, and us (for moſt of them grow from Precedents which ſhews rather a Toleration than Inheritance;) yet we are pleaſed to give you our Royal Aſſurance, that as long as ye contain yourſelves within the Limits of your Duty, we will be as careful to maintain and preſerve your lawful Liberties and Privileges as ever one of our Predeceſſors were.

Nay, as to preſerve our own Royal Prerogative:

So as your Houſe ſhall have only Need to beware to trench upon the Prerogative of the Crown, which would enforce us, or any juſt King to retrench them of their Privileges that would pare his Prerogative and Flowers of the Crown.

But of this we hope there ſhall never be Cauſe given.

Dated at *Newmarket* the 11th Day of *December*, 1621.

SATURDAY the 15th Day of *December*, 1621.

Sir *George Moore*. I have conſidered not only what to ſpeak, but what to do. Journ. Dom. Com. 19 Jacobi I.

Our Liberties are the deareſt Things we have, and the King ſummoned this Parliament, would have free Election of Knights and Burgeſſes, the King hath aſſured us of Religion, which is a great Comfort to us all.

And when as *Ezechias* was ſick, and he turned himſelf to the Wall and prayed to God for Health, ſo we have done our Duties to God, we can do no more. That a Recollection be made of what we have done, that it may appear to Poſterity how far we have done.

Mr. *Mallorie*. That we may conſider of our Liberties.

The King hath ſent a gracious Letter, but we are worſe than before; for he ſaith our Privileges are not by Inheritance, and that we muſt not trench into his Prerogative.

Mr. Serjeant *Aſhley*. We have Vinegar and Oil, but firſt Vinegar, which was ſomewhat ſharp, but the Oil, it was Oil of Gladneſs to me.

If the King were a Tyrant, we had Reaſon to complain, but he is gentle in Government.

He ſaith he will maintain our Religion, and to anſwer the Gentleman about his Speech concerning our Liberties, *Plus valet legalis concluſio quam legalis confeſſio*, to conſider of Things at Home and Abroad of Religion, and to take away the Scandal that may happen Abroad, that they will be glad to ſee our Religion on Fire.

That the Lords, upon the third reading the Bill of Monopolies, would have a Conference with us; and ſo gave their Voices, by which it was caſt out.

Sir *Francis Seymour*. When I caſt mine Eyes back on our Anſwer from the King, that our Privileges are but permiſſive, that we do ſurceaſe for ſpeaking of the Marriage and War, but with a Proteſtation that it is our Right notwithſtanding, and be Petitioners to the King that we may now depart, and have a Seſſion the next Meeting.

That Bills go on and intreat his Majeſty to this Purpoſe.

Sir *Richard Weſton*. I am ſorry I have Occaſion now to ſpeak, that we do not be diſcontented with his Majeſty's Anſwer, when he conſidered not only to give us Satisfaction, but that all the World might conceive well that his Majeſty and his Subjects agree that we be not contumacious, ſeeing his Majeſty giveth us Freedom in our Liberties, and hinder not our Countrymen that Good which we may give them, by our ending now of Buſineſs.

Sir *James Patrott*. If we were ſecured of our Religion from his Anſwer, as by the Queen's Anſwer to the *Polonian* Ambaſſador, and in Religion as if we ſhould be ſlack, and of our Omnipotencies, that there may be a Committee choſen, and that we may chuſe thoſe that conſider of the rejoycing of our Adverſaries, how they may be of *Jeruſalem*.

For this may be the happieſt Parliament that ever was.

Mr. *Glanvile*. That a Letter in theſe general Terms cannot give us Satisfaction.

Upon every Letter we have been caſt upon the Rocks. That

Firſt,

First, Of what Liberties we have here to ſpeak of.

Secondly, Whether we may be queſtioned in Parliament, or after.

Thirdly, If when we are commanded to go on in Bills, Whether we may only do them and no other Things: For the Lords can paſs no more.

1. Bills,
2. Grievances,
3. Judicature.

For without Judicature, we cannot make Laws; and therefore we muſt uſe Judicature.

Mr. Sollicitor. Not to have an ominous Interpretation of it; and not to diſpute with our Sovereign, for fear we loſe more than we get.

Serjeant *Aſhley* joineth with Mr. Sollicitor: And that there be a Committee and Proteſtation, as *in primo Jacobi*; as the old Friar ſaid,

When Omnipotence cometh in place,
Then Miſericordia *is out of Grace.*

That we have the Word Command explained,
To go to Bills, by Mr. Secretary.

Mr. *Hackwell.* The Privileges of this Houſe are the Flowers of the Crown, and that we ſhall never ſit here again if they be not maintained now.

Our Privileges are part of the Law, not only my Opinion, but Sir *Edward Coke's*.

The Cuſtom of the Commons of *England*: if ſo generally, the Law of *England* is the Eſſence of the Parliament.

The Common Council is a Court to puniſh Contempts.

Dr. *Cowell's* bold Attempt, he was puniſhed and impriſoned, 5 *Henry* V. N°. 15.

The Privileges are the Laws of *England*.

To anſwer an Objection that the Speaker deſired the King to maintain our Privileges, but of late this hath been uſed in the Speaker's Speech.

The 2d of *Henry* IV. *John Cheney* made a Proteſtation, untill Queen *Elizabeth's* Time not uſed, for it was miſliked always:

And ſeeing ſo much Uſe is made of it, I would have it left out.

That a Committee be choſen, that we may hold our Liberties as our ancient Privileges by Inheritance, uſed in the Proteſtation in the firſt Seſſion of the firſt Parliament about Impoſitions.

Sir *William Stroade.* That it be drawn as in the Parliament *primo Jacobi*, ſome being here that were of the Committee,

That thoſe of the Council ſeeing there is an Impoſſibility of a Seſſions, that they intreat the King we may depart for the Holydays, and come after,

And that the Committee may be choſen, and this being not in the Clerk's Book; with which Mr. *Pymme* joyneth.

Sir *Edward Coke.* For the particular Privileges being infringed to make a Proteſtation to the King.

1. Privileges, Donatives.
2. No Court of Record.
3. No Judicature.

When the King was informed he was ſatisfied.

And yet there was a Proteſtation of the fundamental Laws of our Kingdom.

Sir *James Puckering.* That the Commons of the Realm might mend the ſame, if there were an Error; and that if the King would not grant the Liberties, they would be ſilent.

Mr. *Alford.* For a general Committee for three Things, that they may be debated,

1. Whether we may touch Prerogative or no, may be diſputed.
2. Monopolies.
3. Cart-taking.

Nullum tempus occurrit Regi, all Prerogatives, a Committee of the whole Houſe by Queſtion, Time, and Place, in general all the Privileges of the Houſe.

That To-morrow Morning we may go on, and in the Afternoon for Grievances.

To which Sir *Thomas Wentworth* joineth.

Mr. *Brooke.* That I am ſomewhat ſatisfied by the Letter, that we might be all of one Mind, and we muſt not ſtrive with a mightier Man (ſaith *Solomon*) that the King is careful of Religion, and the Papiſts ſhall be curbed.

But be mild now for appeaſing of foreign Princes againſt Proteſtants.

That we have Privileges by Grant and Precedent.

It is no matter how we have them, ſo we have them, as well as by Inheritance.

Let us make a Proteſtation, and we ſhall go as well away as we came.

The Schoolmaſter would not argue with *Marcellus*, for he had twenty Legions.

That an Act be that all Bills ſhall remain in the ſame Plight as they were before, and to conſider of Grievances, as of Dr. *Craddock*, and Dr. *Lamb*'s Buſineſs, that will be otherwiſe an Offence to the World, who will ſay we do not agree.

Mr. Treaſurer. The Houſe is moved with the angry Letter of our King, that we were the Cauſe of the ſame;

And take it for Admonition, for Religion how he will ſecure it, and for our Privileges that he ſaith we ſtrained his Letters afore; and as we are jealous, ſo is he, for while we ſtrive to enrich we loſe all, and that we may go on with Bills.

To which Sir *Robert Cary* accordeth.

And that Mr. Speaker may put the Queſtion.

Sir *Robert Philipps*. For Obſervation in three Reſpects,

1. Reprehenſion.
2. Declaration.
3. Admonition.

Firſt, For Reprehenſion, I wiſh it never had been, or elſe now forgotten; but by Juſtification if he had heard our Diſcourſes, and ſeen into our Hearts by a true Perſpective; but I know there is a Difference between the Language of a Prince and of a Subject.

Secondly, The Declaration.

1. For Religion.
2. The Marriage with *Spain*.
3. Of the *Palatinate*.
4. Our Privileges.

1. That he is the greateſt King on Earth, and therefore to protect that, without which God will not protect him, we gave God the firſt Conſultation of us, and not rowl the Stone of Marriage further, and

2. That he will deal plainly with the Match of *Spain*, had we known it ſooner, we would not have ſpoken of it.

3. War with all Princes for the Poſſeſſion of the *Palatinate*.

4. Our Privileges I would to God we could decline, but I cannot, God knoweth; that we might maintain our Privileges, as ſometimes, he ſaid, he would not live longer than we ſhould have all our Favours, and we have gone no further than in the firſt Parliament of the King, that we had no Liberties but by Grant, but then they were amended, and claiming their Liberties with Proteſtation; that a Committee be choſen to conſider of our Privileges, and to proceed in Buſineſſes alſo; and that thoſe that would have it a Seſſions, I will anſwer

them, that it is impoſſible, for it will not content the Country, becauſe Grievances and Trade cannot be effected.

And for Dr. *Lamb*, and Dr. *Craddock*; objected the Subſidy cannot be paid.

Therefore to adjourn now between this and *Chriſtmas*, and it will be but a Month longer, and we ſhall give Satisfaction to all Parties, and it is fourteen Days ſince we have been interrupted.

Sir *Thomas Wentworth*. If I reſpected not the inward Man more than the outward Man, the laſt Clauſe of the King's Speech, that the Adverſary be not ſcandalized, and that we go on, and that which ſtoppeth this that our Privileges are permiſſive, for the common Laws are but Cuſtoms,

For the Common Laws are but Cuſtoms:

That a Committee be choſen, and that we may go to Bills,

Not for a Seſſions,

Not to ſet two Things at once, but firſt the Privileges, and then go on.

Mr. *Beacher*. All that we have done is ſpread Abroad, what we have done that God would confound all Enemies of theſe Houſes, who are Enemies of the State, that we go on with Bills.

Sir *Dudley Diggs*. Firſt of our Privileges, for *nullum tempus occurrit Regi*.

That it be committed, and then to Bills; for I am perſuaded that the King doth not hinder it, but diſpute.

Mr. *Carew*. That this Part of the Letter be read, and although we cannot allow of our Privileges, yet it is by Grant confirmed by Precedents, we are upon a weighty Buſineſs.

Our Privileges are by Law from our Anceſtors, and are our Due.

Not to digreſs from it, for we have been interrupted twelve Days, for there is but five Days left, that the King would meet with us half way.

His Speech to the Lords, that we ſhould not aſk any thing without Bluſh.

The Pardons and Bills of Grace to be conſidered of to paſs.

I cannot conceive they can be finiſhed in five Days.

And by Mr. Chancellor it was ſaid, we ſhould not ſtick of the Manner, but of the Matter.

And that we declare to his Majeſty that the Privileges are our Inheritances, as in *primo Jacobi*, and a Proteſtation upon it,

And that Act to be read.

This

This is of that great Conſequence, that our Liberties muſt be maintained, that they are by Inheritance.

If we ſhould yield that they are permiſſive, the Walls would witneſs againſt us the contrary.

As in *Magna Charta*, we have it granted to the Subjects, and to their Heirs for ever, and from us and our Anceſtors for ever, the City of *London*, and all Corporations and all Perſons, all Privileges as they were wont to have, which they had before, and Franchiſes and Liberties of Barons.

So as in *primo Jacobi* to make a Proteſtation.

The Word of Inheritance to be queſtioned at the Committee amongſt us as our Birth-right.

In the 8th of *Henry* IV, in *Gaſcoigne*'s Caſe, the Laws there are called our Liberties.

So then our Liberties is to make Laws our Inheritance.

21 *Edward* IV. *fol.* 44. Abbot of *Waltham*'s Caſe, 49 *Lib.* Aſſize. Our Cuſtom, Law is not Cuſtom, but by Cuſtom our Laws are our Inheritance; then our Liberties, by which we make Laws.

A Committee choſen to make a Proteſtation, aad to maintain our Privileges.

Mr. Sollicitor. That the Liberty of Parliament is the Inheritance of the Subject, but to go that Way by which we ſhould affect it, to paſs by the Phraſe of his Letter, not to meddle with the Prerogative of the King; to make a Proteſtation of our Liberties, and to go to the King again:

Although I am ſorry that we ſhould not go on.

That the Pardon will be worth three Subſidies, I dare make it known to any.

Sir *Edward Sackvile*. In the firſt Seſſions *primo Jacobi*, the King did ſay our Privileges were permiſſive, and we might have a Proteſtation.

So Sir *Francis Fane* ſaid, Let there be ſome ſelect Committee, and the Houſe to go on.

Lord *Clifford*. The Privileges are our Inheritance, and to go on with a Committee.

Sir *Edward Coke*. Silence would ſuit my Conſcience, *cum æquali dubium, cum principe ſtultum, cum puero pœnam, cum puella pudorem.*

One out of *Ireland* would not diſpute with the King.

The

The King, as the Sun *in ſummo gradu*, hath his full Light.

In the 39th of *Edw.* IV. The Liberties of the Court is the Law of the Court.

19 *Hen.* VI. When the Law groweth dangerous, they may be freed by Parliament.

How can great Men be puniſhed?

Their Burthen is pulled off.

We muſt have another Interpretation: He would have us have another Style, as, *Nulli vendimus:* The King will not ſell Juſtice; the Law no Cuſtom, but by Cuſtom, that is, particular Laws.

The King doth not mean to take away our Privileges, but that a Committee of the whole Houſe, for we can have no Proxies, but we repreſent others.

That a Committee be appointed on *Monday*.

Sir *William Spencer* remembereth the King in his Majeſty's former [Speech] of puniſhing in or after Parliament, — deſireth this Particular may be examined by the ſame Committee.

Mr. *Noy*. That we may not go on, but with a Proteſtation.

The beſt Way to maintain our Privileges is by Uſages, as in the Cure.

The Second Thing to be enquired of is, not to diſpute of it; but to do the beſt we may to maintain it, as in Judicature.

And any Thing in Queſtion to be handled, as in the Great Charter, not *has Libertates*, but *ſuas*, not to admit ourſelves out of Poſſeſſion.

Sir *George Calvert*. *Firſt*, in general our Priviledges.

Secondly, That in particular he thinketh not that the King would take away our Privileges, if the Proteſtation will do any Good, if not to take any other Courſe:

For he would have to be uſed, not to ſpeak of that which Sir *William Spencer*.

Mr. *Glanvile*. That the King may, for Matters of Treaſon ſpoken, take off his Head, we cannot; for Capital Matters we cannot; and that the Committee may make a Declaration by Queſtion, a Committee of the whole Houſe, concerning the Declaration of our Privileges and Liberties, and Things incident to it.

Weighty Matters move ſlowly, by Nature ſlowly; and therefore *Monday* the Queſtion reſolved.

MONDAY,

MONDAY, the 17th of *December*, 1621.

Sir *George Calvert*, Secretary, delivered his Majeſty's Letter to the Houſe of Commons; the Tenor whereof followeth:

RIGHT Truſty and Well-beloved Counſellors, We greet you well. We are ſorry to hear, that notwithſtanding our reiterated Meſſages to our Houſe of Commons for going on in their Buſineſs, in regard of the Shortneſs of Time betwixt this and *Chriſtmas*, and of their own earneſt Deſire, that we ſhould now conclude a Seſſion, by making of good and profitable Laws, they continue to loſe Time: Journal Dom. Com. 19 Jac. I.

And now of late, upon our gracious Anſwer ſent unto them, have taken Occaſion to make more Delay, in appointing a Committee to-morrow to conſider upon the Points of our Anſwer; and eſpecially concerning that Point in it, which maketh mention of their Privileges.

Our Pleaſure therefore is, that you ſhall in our Name tell them, That we are ſo loath to have Time miſ-ſpent, which is ſo precious a Thing, in the well uſing whereof our People may receive ſo great a Benefit; as we are thus far contented to deſcend from our Royal Dignity, by explaining at this Time our Meaning in our ſaid Anſwer touching that Point, that all our good Subjects in that Houſe, that intend nothing but our Honour and the Weal of the Common-wealth, may clearly ſee our Intention.

Whereas in our ſaid Anſwer we told them, we could not allow of the Style, calling it their ancient and undoubted Right and Inheritance; but could rather have wiſhed, that they had ſaid, their Privileges were derived from the Grace and Permiſſion of our Anceſtors and us (for moſt of them grow from Precedents) which ſhews rather a Toleration than Inheritance:

The plain Truth is, that we cannot with Patience endure our Subjects to uſe ſuch Antimonarchical Words to us, concerning their Liberties, except they had ſubjoined, that they were granted unto them by Grace and Favour of our Predeceſſors.

But as for our Intention herein, God knows we never meant to deny them any lawful Privileges that ever that Houſe enjoyed in our Predeceſſors Times, as we expected our ſaid Anſwer ſhould have ſufficiently cleared them; neither in Juſtice whatever they have Right unto, nor in Grace whatever our Predeceſſors or we have graciouſly permitted unto them.

And therefore we made that Diſtinction of the moſt part:

For whatſoever Privileges or Liberties they enjoy by any Law or Statute, ſhall ever be inviolably preſerved by us.

And we hope our Poſterity will imitate our Footſteps therein:

And whatſoever Privileges they enjoy by long Cuſtom and uncontrolled and unlawful Precedents, we will likewiſe be as careful to preſerve them, and tranſmit the Care thereof to our Poſterity.

Neither was it any way in our Mind, to think of any particular Point, wherein we meant to diſallow of their Liberties:

So as in Juſtice we confeſs ourſelf to be bound to maintain them in their Rights; and in Grace we are rather minded to increaſe than infringe any of them, if they ſhall ſo deſerve it at our Hands.

To end therefore as we began, let them them go on chearfully in their Buſineſs, rejecting the curious Wrangling of Lawyers upon Words and Syllables; otherwiſe (which God forbid) the World ſhall ſee how often, and how earneſtly we have preſſed them to go on according to their Calling with thoſe Things that are fit to be done for the Weal of our Crown and Kingdom, and how many curious Shifts have been from Time to Time maliciouſly found out to fruſtrate us of our good Purpoſe, and hinder them from the Performance of that Service which they owed to us and to our whole Kingdom; whereof when the Country come truly to be informed, they will give the Authors thereof little Thanks.

Mr. Secretary. That as the King's Anſwer is recorded, ſo that this may be recorded for the conſerving of our Privileges, and Copies to be taken, and to go on to our Liberties.

Sir *Edward Coke.* We have our Liberties either by Law, Cuſtom and Precedent, and Parliament, which his Majeſty is not acquainted with, nor we particularly, as in the Indemnity of the Lords and Commons in the Caſe ſpoken of.

I would I were a Sacrifice, ſo there was a good Correſpondence between us and the King.

The Precedent was drawn upon a ſmall Occaſion:

Walter Clarke, Burgeſs of *Chippenham*, for a Riot, and indebted to *Robert Baſſett* and *John Paine*, was ſued and put into the *Fleet*. The Parliament would do nothing: The King could not ſue a Parliament Man; and they could do nothing. And the ſaid *Clarke* was outlawed.

That the Liberties are our Inheritances, and to their Poſterities.

39 *Hen.* VI. The Petition to the King, praying the Commons, that great Delay is in the Parliament, by *Walter Clarke* by your Majeſty's Suit, againſt the Liberties of our Houſe, for a Fine and Impriſonment. Pleaſe it your Highneſs, in diſcharging the Delay to ordain and eſtabliſh

bliſh, That the Chancellor ſend out your Writ to free *Walter Clarke* from the Fine and Impriſonment, with a Saving to the King, and *Robert Baſſett* and *John Payne*, after the Parliament, and other Debts, ſaving our Privileges.

Another Precedent for *John Atwell*, Burgeſs for *Exeter*, in the ſame Caſe: So there hath been ſuch Delay by ſuch Things.

Sir *Francis Seymour*. That his Majeſty hath not cleared theſe Things.

Sir *Robert Phillips*. I love not Curioſity of Syllables, and in Words, but in our Liberties.

I will not ſtain my Conſcience, how our Liberties have been infringed.

Something in the Letter is doubtful: Therefore to be left to the Committee to compare Precedent with Precedent, that we may not be thruſt upon ſuch Rocks.

Mr. Recorder. That the Anſwer was a Wound to our Liberties: But better doth ſatisfy me, but one Sentence; he cannot endure any Antimonarchical Power to be in Subjects: For the Word, it was never uſed in any Precedent that I remember.

But that the King ſayeth, they are granted; it is in his Oath, that he ſhall yield to confirm the Liberties, *conceſſas Rege, Clero, & Populo.*

We can do nothing in this ſhort Time, and it may be prejudicial to our Poſterity, if any ſuch Thing be omitted to go on in Buſineſs; and that there may be a good Union between the Head and the Body.

Sir *Nathanael Rich*. That thoſe Liberties that have been queſtioned, as it is ſignified by the Letter, there may be a Re-committee choſen to give Satisfaction to his Majeſty; that we may end as we began.

Sir *Edward Cecil*. That it is impoſſible there can be no Seſſions: That we maintain our Privileges; and that we take Copies of it, and conſider of it 'till to-morrow Morning.

Mr. *Crew*. That we do now chuſe a Committee, much more to conſider of it.

He repeateth that Part of the Letter, that our Delay hath increaſed by our late appointing a Committee:

That

That the King cannot abide the Antimonarchical Words of our Subjects:

That by a Committee to conſider not to protract Time, but to go on with all Duty.

The Abundance of the Prerogative is great:

So it is for our Liberties to be conſidered.

Sir *Dudley Diggs.* That the Prerogatives and Liberties are large Fields, and not to be too much intermeddled with:

That the Huſband and Wife are to be made Friends, if they be fallen out.

There is ſuch a Jealouſy between us, that there muſt be Humility in the Subject: But the King will ſay, nay the King will think, that it is his Right; and we think that it is our Right: And will you not conſider how Buſineſſes are? For I fear there cannot be a Seſſion.

Mr. Chancellor of the *Dutchy* deſireth that we might not ſtir, for fear of the King, and againſt the Peace.

TUESDAY the 18th of *December*, 1621.

Mr. Speaker. I have received a Letter from the King to this Houſe; the Tenor whereof followeth in theſe Words:

Mr. SPEAKER,

WHEREAS, at the humble Suit of the Houſe of Commons, We condeſcended to make this Meeting a Seſſion before *Chriſtmas:* To which Purpoſe we gave them Time until *Saturday* next, in caſe they would ſeriouſly apply themſelves to that End: And likewiſe, out of our Grace, and to take away all Miſtakings, by our Letters directed to our Secretary, we were pleaſed ſo fully and clearly to explain ourſelves in the Point of maintaining all lawful Privileges to our ſaid Houſe, which ſince we cannot hear, hath had the wiſhed Effect in making them ſpend this ſhort Time in preparing Things moſt neceſſary for a Seſſion.

We have thought good once more clearly by this to impart our Mind unto them, which is, That in reſpect of the Expectation, after this ſo long a Meeting in Parliament, as alſo that the generality for the moſt part rather judge Things by the outward Effects, than enter into the Cauſes of them;

We have an earneſt Deſire to make this a Seſſion, to the end that our good and loving Subjects may have ſome Taſte, as well of our Grace and Goodneſs towards them, by our free Pardon, and good

Laws

Laws to be paſſed; as they have both by the great and unuſual Examples of Juſtice ſince this Meeting, and the ſo many Eaſes and Comforts given unto them by Proclamation.

And therefore calling to mind, that the paſſing of a Subſidy, an Act for Continuance of Statutes, and the Pardon, are the three moſt preſſing Buſineſſes to be effected before the End of the Seſſion; we wiſhed them, that as we had given Order for the Pardon to go on with all Expedition, ſo they preſently go Hand in Hand with the Act for Continuance of Statutes.

As for the Subſidy, though the Time preſſeth much, yet if they find it cannot conveniently be done, we will not make that any way an Impediment to the Good which we deſire our People ſhould feel, by making this a Seſſion.

Thus much we thought good to give them to underſtand, and withall to aſſure them, that, if they ſhall not apply themſelves inſtantly to prepare the aforeſaid Things for our Royal Aſſent againſt *Saturday* next, we will, without expecting any farther Anſwer from them, conſtrue from their Slackneſs, that they deſire not a Seſſion.

And in ſuch a Caſe, we muſt give a larger Time for their returning homewards to ſuch of both Houſes as are to go into their Countries to keep Hoſpitality among their Neighbours in this Time of Receſs.

Mr. *Weſton.* This is an unuſual Thing, that nothing but the Pardon, and the Continuance of Statutes is impoſſible to be done, and to declare to his Majeſty, that his Majeſty's Meſſages have been the Cauſe of our Interruptions; and to petition his Majeſty, that it may be an Adjournment, not a Seſſions.

Sir *Robert Phillips.* That it is impoſſible that upon *Saturday* we can go down into the Country to keep *Chriſtmas.*

That this be referred to the Committee: He rejoiceth much at this gracious Letter.

Mr. *Mallett.* That the King is the Beginning and Ending of Parliaments: And this Bill may be finiſhed eaſily now.

Mr. Sollicitor. That the King's Eye is not now on the Subſidy: And to rely of the King's Favour.

Mr. *Crew. Non eſt dignus dandis, non eſt dignus datis.* This Letter is Oil: And that we deal not in our Privileges.

Now then, when we come again for the Continuance of the Statute, it cannot be paſſed.

Mr. *Noy*. We cannot finiſh neither the Pardon nor the Continuance.

For the Pardon, we muſt conſider of thoſe Grants that are of theſe Things pardoned, that they may be recalled; and that we conſider ſome Statutes to be repealed are worth nothing, yea the Penalty granted to us, ſave that the Laws are worth nothing.

That we may thank his Majeſty, and to conſider that our Privileges and his Prerogative have a Compatibility.

Sir *Francis Seymour*. That we firſt conſider the Liberties of our Houſe:

Secondly, To give Thanks to his Majeſty, and to tell his Majeſty, That it is impoſſible we can now have a Seſſions.

Sir *George Calvert*. That the King will not have an Anſwer.

Serjeant *Aſhley*. That the Grants of the Things which are to be pardoned, honourable Perſons have them, and the King hath excepted thoſe Things out of the Grant;

[Mr. Serjeant *Aſhley* in the Chair]

1. Ancient,
2. Modern.

For Ancient; *Firſt*, The King's Letter, and a Signification of his Favour:

Secondly, A Declaration, that we cannot now have a Seſſions.

A ſelect Committee to be choſen, that this Evening may particularly conſider of our meeting together.

Mr. *Glanvile*. That we do ſuddenly give the King Thanks for his Letter.

For haply ſome Enemies of this Houſe have now an Opportunity to do us Miſchief, and to ſignify our Loyalty to his Majeſty:

And that we make our Privileges ſo clear, as no Bones hereafter may be caſt.

Sir *Edward Coke*. Only concerning the Letter.

Firſt, An humble Thankſgiving to his Majeſty.

Secondly, A Proteſtation of our Duty to his Majeſty.

Not to touch any Thing of our Privileges.

Mr. Sollicitor, Sir *Samuel Sandys*, Mr. *Glanvile*, and the Chancellor of the *Duchy*, of the Committee.

Sir *Edward Coke.* If our Privileges have been invaded, to make a Proteſtation, not in general, but in particular.

Sir *Robert Philipps.* That it be for Election, Juriſdiction, Safety, and Freedom.

That the Liberties of our Houſe are the Inheritance of the Subject,

The King's own Words are a Witneſs;

Firſt, As a King;

Secondly, As a Chriſtian King.

A Difference between a Chriſtian King and a Political King.

That the King is bound to maintain our Liberties; and that we may read firſt his Majeſty's Letter.

That he might puniſh any Man in Parliament and without.

Secondly, &c.

Thirdly, That our Privileges are of Grace, and not of Inheritance.

1. To conſider in the Apology *primo Jacobi:*
2. The Act of Parliament referred to Mr. *Glanvile* to draw:
3. That we petition his Majeſty.

Mr. *Noy.* That there be an Act.

But our Liberties, not to diſpute them: For then there is a Queſtion of that which is without Queſtion.

Sir *Nathanael Rich.* Freedom of Speech hath been in queſtion: They proteſted, and the King was ſatisfied: Freedom of Speech is a Matter often impeached this Parliament. Do this, Do not this, is the Manner of proceeding in this and in that.

And for the Juriſdiction, that we ſhould have Freedom of Speech, that we be not committed in Parliament and after.

Sir *George Moore* moved, not to meddle with any Thing that appertained to the King.

Mr. *Mallett.* If we never had been interrupted, we need not have done any thing.

And to ſet down the Interruption as the King's Letter.

Firſt, That we ſhould go on with Bills only.

Secondly, That we may be puniſhed in Parliament and after for great Capital Offences.

In the *Exchequer*, the King may, though the Party have a Writ of Privilege, have him puniſhed; but no Exception, that the King may deal with a Parliament Man.

Sir

Sir *Thomas Wentworth.* When we have juſtified our Actions in our Declaration, I miſlike of this Order.

Mr. *Wentworth.* That there is no Commandment that we ſhould not do ſuch a Thing in Parliament; a Negative Bond, we have no Exception.

In the 7th of *Henry* VIII. *Kelloway*, Abbot of *Wincheſter*, at *Paul*'s Croſs, curſeth the Parliament, for dealing with Matter of Religion in the Houſe.

But in an Act of *Henry* VIII. in the Caſe of *Stroude*, is no Exception uſed.

In *Ferrers*'s Caſe in *Hollinſhead*, *Hen.* VIII. we being informed by our Judges, That we do not ſtand no where ſo Royally as in Parliament.

Mr. Sollicitor reported the Tenor of the Petition to his Majeſty, as followeth:

May it pleaſe your moſt excellent Majeſty,

WE your humble and loyal Subjects, the Knights, Citizens, and Burgeſſes, of your Commons Houſe of Parliament, having this Morning, to our great Comfort, heard your Majeſty's Letter ſent to our Speaker, full of Grace and Goodneſs to us and all our People, have thought it our Duty forthwith to return our moſt humble and hearty Thanks to your ſacred Majeſty, for ſo Royal a Favour vouchſafed unto us.

And we do humbly beſeech your Majeſty, to be truly informed from us, That although we have been very deſirous in our Duty to your Majeſty, who called us to this Service, and to our Country for whom we ſerve, to have ſome good Laws now to have been paſſed; and that there might have been a Seſſions before *Chriſtmas*.

To which your Majeſty upon Petition was heretofore graciouſly pleaſed to give way.

Yet entering now into a ſerious Conſideration of the Nature of thoſe Things which muſt of Neceſſity be prepared for the finiſhing of a Seſſions, and the Straitneſs of Time whereunto we are driven by ſome unhappy Diverſions, which have fallen upon us, to our great Grief, we are once again enforced to fly to your Majeſty's Grace and Favour, humbly ſubmitting ourſelves to your Royal Wiſdom, what Time will be fitteſt for our Departure, and for our Re-acceſs to perfect thoſe Beginnings, which are in Preparation with us: Which Time, by God's Grace, we reſolve to ſpend with that Diligence and Care, as ſhall give good

good Satisfaction to your Majeſty, to our Country, and to our own Conſciences:

And that we ſhall make good uſe thereof.

Mr. Speaker being in the Chair, by Queſtion it was reſolved, that the Petition ſhould be ſent to the King by

Mr. Chancellor of the *Dutchy*,
Sir *George Goring*,
Mr. *Murray*,
Sir *Henry Mildmay*.

Mr. *Crew*. That it be entered, that we make a Vow for our Liberties in particular.

Mr. *Alford*. That there may be a Queſtion, that we may touch the Prerogative in Parliament, and ſecuring of our Members.

Sir *John Hilliard*. That they be not infringed for not adminiſtering an Oath; whereof we have two Precedents, That we might and we were one Houſe with the Lords.

Mr. *Crew*. Some particular Violation of our Liberties:

Firſt, Not to take notice of our Writ.

Secondly, Freedom of Speech by a Parliamentary Power, not to be queſtioned in Parliament, nor after, and *primo Jacobi* to be read.

Sir *Edward Coke*. Not to avouch any, that we may have Freedom of Speech; and to confer of State, as in 7 *Edw*. III. and Government, as we find Occaſion to ſpeak of War, and Peace, and Marriage, we may treat of any thing concerning the King, State, and Church.

And that the Committee may handle Law, Miſchief, and Grievances.

Mr. *Finch*. We ſhall fall upon a Rock.

That the Meſſages which his Majeſty ſent be not prejudicial to us, but that this be reſerved for a Sub-Committee.

Sir *George Moore*. That if any Man have offended the Parliament Houſe, he may puniſh him.

Mr. *Noye*. For Freedom of Speech: For we can have no Council to ſpeak for us in a General Council.

A great while ago, Freedom of Speech was queſtioned; and there may be ſomething ſpoken that would be private, therefore to be com-

mitted, for War and Peace are generally treated of, and of the State of the Church, Law, Miſchiefs, Grievances, and of the Freedom of our Perſons, perſonal and loyal Freedom by this Houſe puniſhed, and to command us to go about any Buſineſs, or in particular confining us, that it is our Inheritance, and all things incident to thoſe things.

That the King is not to be miſinformed; that all theſe be referred to a Sub-Committee, for none here can inform, but the whole Houſe by the Speaker to the King, to make theſe Articles to be reduced into the Form of a Proteſtation, and may be debated by the Committee.

To ſhew the Reaſons why they do it not.

To ſhew the Reaſons to the Houſe.

The Committee to be named this Afternoon.

The Sub-Committee to draw a Proteſtation upon the Points aforerehearſed, their Liberties being confirmed by 39 *Edward* III, *anno* 4 *Henry* VIII, for our Liberties to treat of State Matters, and Matters of the Church and Government, and other things concerning Parliaments.

And in 21 *Richard* II, That it is no Treaſon, no Pain to be uſed for ſpeaking any thing in Parliament, that is Parliament Matter.

1 *Henry* IV. *cap.* 10, in the printed Books.

Sir *Edward Coke*. In the *Record*, *Num.* 10, there is no Treaſon; but according to the Law of the Realm, to wit, to kill the King, Queen, Children, *&c.*

After it was wrote, put to the Queſtion, and paſſed the Committee, Mr. Speaker being in the Chair; by Queſtion to be entered into the Clerk's Book in this Manner:

The Proteſtation of the Houſe of Commons, entered into the Clerk's Book.

THE Commons now aſſembled in Parliament being juſtly occaſioned thereunto concerning ſundry Liberties, Franchiſes, Privileges, and Juriſdictions of Parliament, (amongſt others herein not mentioned) do make this Proteſtation following:

That the Liberties, Franchiſes, Privileges, and Juriſdictions of Parliament, are the ancient and undoubted Birth-right and Inheritance of the Subjects of *England*, and that the arduous and urgent Affairs concerning the King, State, and Defence of the Realm, and of the Church of *England*, and the Maintainance and making of Laws, and redreſſing of Miſchiefs and Grievances which daily happen in this Realm, are

are proper Subjects and Matter of Council and Debate in Parliament, and that in the handling and proceeding in thoſe Buſineſſes, every Member of the Houſe of Parliament hath, and of Right ought to have, Freedom of Speech, to propound, treat, reaſon, and bring to Concluſion the ſame.

And that the Commons in Parliament have like Freedom and Liberty to treat of thoſe Matters in ſuch Order, as in their Judgment ſhall ſeem fitteſt.

And that every Member of the ſaid Houſe hath like Freedom from all manner of Impeachment, Impriſonment, and Moleſtation (other than by the Cenſure of the ſaid Houſe itſelf) for or concerning any Bill, ſpeaking or declaring of any Matter or Matters touching the Parliament or Parliamentary Buſineſſes.

And if any of the ſaid Members be complained of, or queſtioned for any thing done or ſaid in Parliament, the ſame muſt be ſhewed to the King, by the Advice and Conſent of all the Commons aſſembled in Parliament, before the King give Credence to any private Information.

WEDNESDAY, the 19th of *December*, 1621.

Mr. Chancellor of the *Dutchy* reported the King's Anſwer to the Petition of Thanks to his Majeſty from the Houſe of Commons,

Which he returned by our own Meſſenger in theſe Words:

That we were ſorry this could not be made a Seſſion according to their own Deſire expreſſed in their late Petition preferred unto us, to which we had moſt willingly aſſented: That they knew there was no Fault in us, who, obſerving the needleſs Impediments upon which they took Occaſion to ſtay their Proceedings, had often admoniſhed them not to loſe Time, firſt by Secretary *Calvert*, and afterwards by three ſundry Letters and Anſwer.

But ſince they concerned, the Straitneſs of Time (which they had drawn upon themſelves) was ſuch, that it would permit nothing to be done at this Time:

We had given Order to adjourn the Parliament till the eighth of *February* next, which was the firſt Day we had formerly appointed for our Meeting.

We were likewiſe pleaſed to ſay, that we could not omit to tell them, that we expected other Thanks from them, than they had ſent us at this Time, namely, for our gracious Promiſes, to maintain their Privileges as our own Sovereign Prerogative.

Firſt, Contained in our Anſwer to their Petition.

And

And afterwards as clearly explained and enlarged by our next Letter to Secretary *Calvert*, as our Writs for their Safety, Satisfaction and Advantage, could poſſibly deviſe.

And this Day the Parliament was adjourned to the ſaid eighth of *February*, and before that Time diſſolved by Proclamation.

A Record of ſome memorable Proceedings in the Honourable Houſe of Commons, in the Parliament held Anno 1610, i. e. *in the ſeventh Year of the Reign of King* James I, *with ſome neceſſary Reflections thereupon.*

The Record begins thus,

To the King's Moſt Excellent Majeſty.

Moſt gracious Sovereign,

A Record of ſome worthy Proceedings in the honourable, wiſe, and faithful Houſe of Commons, in the late Parliament. Juſtitia ſuum cuique tribuere. *Printed* 1611.

WHEREAS we your Majeſty's moſt humble Subjects, the Commons aſſembled in Parliament, have received firſt by Meſſage, and ſince by Speech from your Majeſty, a Commandment of Reſtraint from debating in Parliament your Majeſty's Right of impoſing upon your Subjects Goods exported or imported out of, or into, this Realm;

Yet allowing us to examine the Grievances of thoſe Impoſitions in regard of the Quantity, Time, and other Circumſtances or Diſproportion thereto incident:

We your ſaid humble Subjects, nothing doubting but that your Majeſty had no Intent, by that Commandment, to infringe the ancient and fundamental Right of the Liberty of Parliament, in Point of exact diſcuſſing of all Matters concerning them and their Poſſeſſions, Goods and Rights whatſoever,

Which yet we cannot but conceive to be done, in Effect, by this Commandment, do with all humble Duty make this Remonſtrance to your Majeſty.

Firſt, We hold it an ancient, general, and undoubted Right of Parliament, to debate freely all Matters which do properly concern the Subject, and his Right or State:

Which Freedom of Debate being once foreclоſed, the Eſſence of the Liberties of the Parliament is withal diſſolved.

And

And whereas in this Caſe the Subjects Right on the one Side, and your Majeſty's Prerogative on the other, cannot poſſibly be ſevered in Debate of either,

We alledge that your Majeſty's Prerogatives of that Kind, concerning directly the Subjects Right and Intereſt, are daily handled and diſcuſſed in all Courts at *Weſtminſter*, and have been ever freely debated upon all fit Occaſions, both in this and all former Parliaments, without Reſtraint.

Which being forbidden, it is impoſſible for the Subject either to know or maintain his Right and Property to his own Lands and Goods, though never ſo juſt and manifeſt.

It may further pleaſe your moſt excellent Majeſty, to underſtand that we have no Mind to impugn, but a Deſire to inform ourſelves of your Highneſs's Prerogative in that Point:

Which, if ever, is now moſt neceſſary to be known.

And though it were to no other Purpoſe,

Yet to ſatisfy the Generality of your Majeſty's Subjects, who finding themſelves much grieved by theſe new Impoſitions, do languiſh in Sorrow and Diſcomfort.

Theſe Reaſons, *dread Sovereign*, being the proper Reaſons of Parliament, do plead for the upholding of this our ancient Right and Liberty.

Howbeit, ſeeing it hath pleaſed your Majeſty to inſiſt upon that Judgment in the *Exchequer*, as being Direction ſufficient for us, without further Examination, upon great Deſire of leaving your Majeſty unſatisfied in one Point of our Intents and Proceedings;

We profeſs, touching that Judgment, that we neither do nor will take upon us to revere it.

But our Deſire is to know the Reaſons whereupon the ſame was grounded.

And the rather for that a general Conceit is had, that the Reaſons of that Judgment may be extended much further, even to the utter Ruin of the ancient Liberty of this Kingdom, and of the Subjects Right of Property, to have Lands and Goods.

Therefore the Judgment itſelf being the firſt and the laſt that ever was given in that Kind, for ought appearing unto us, and being only in one Caſe, and againſt one Man,

It can bind in Law no other than that Perſon, and is alſo reverſal by Writ of Error granted heretofore by Act of Parliament.

And neither he nor any other Subject is debarred by it from trying his Right in the ſame or like Caſe, in any of your Majeſty's Courts of Record at *Weſtminſter*.

Laſtly, We nothing doubt but our intended Proceeding in a full Examination of the Right, Nature, and Meaſure, of theſe new Impo-

ſitions (if this Reſtraint had not come between) ſhould have been ſo orderly and moderately carried, and ſo applied to the manifold Neceſſities of theſe Times, and given your Majeſty ſo true a View of the State and Right of your Subjects, that it would have been much to your Majeſty's Content and Satisfaction (which we moſt deſire) and removed all Cauſe of Fears and Jealouſies from the loyal Hearts of your Subjects (which is, as it ought to be) our careful Endeavour.

Whereas contrarywiſe in that other Way directed by your Majeſty, we cannot ſafely proceed, without concluding for ever the Right of the Subject.

Which without due Examination thereof, we may not do.

We therefore your Highneſs's loyal and dutiful Commons, not ſwerving from the approved Steps of our Anceſtors, moſt humbly and inſtantly beſeech your gracious Majeſty, that without Offence to the ſame, we may (according to the undoubted Right and Liberty of Parliament) proceed in our intended Courſe of a full Examination of theſe new Impoſitions, that ſo we may chearfully paſs on to your Majeſty's Buſineſs, from which this Stop hath by Diverſion, ſo long with-held us:

And we your Majeſty's moſt humble, faithful, and loyal Subjects, ſhall ever, according to our bounden Duty, pray for your Majeſty's long and happy Reign.

Delivered by twenty of the Lower Houſe of Parliament, the 24th of *May*, 1610.

PETITIONS.

Moſt gracious and dread Sovereign,

SINCE it hath pleaſed Almighty God of his unſpeakable Goodneſs and Mercy towards us, to call your Majeſty to the Government of this Kingdom, and hath crowned you with Supreme Power, as well in the Church as in the Common-wealth, for the Advancement of his Glory, and the general Benefit of all the Subjects of this Land,

We do in all Humility preſent at the Feet of your excellent Majeſty, Ourſelves, and our Deſires, full of Confidence in the Aſſurances of your religious Mind, and Princely Diſpoſition, that you will be graciouſly pleaſed to give Life and Effect to theſe our Petitions, greatly tending (as undoubtedly we conceive) to the Glory of God, the Good of his Church, and Safety of your moſt Royal Perſon, wherein we acknowledge our greateſt Happineſs to conſiſt.

I. Whereas

I. Whereas good and provident Laws have been made for the Maintenance of God's true Religion, and Safety of your Majeſty's Royal Perſon, Iſſue, and Eſtate, againſt Jeſuits, Seminary Prieſts, and Popiſh Recuſants:

And although your Majeſty by your godly, learned, and judicious Writings, have declared your Chriſtian and Princely Zeal in the Defence of the Religion eſtabliſhed, and have very lately (to the Comfort of your beſt affected Subjects) publiſhed to both Houſes of Parliament your Princely Will and Pleaſure, that Recuſants ſhould not be concealed, but detected and convicted:

Yet for that the Laws are not executed againſt the Prieſts, who are the Corrupters of the People in Religion and Loyalty, and many Recuſants have already compounded, and (as it is to be feared) more and more (except your Majeſty in your great Wiſdom prevent the ſame) will compound with thoſe that beg their Penalties, which maketh the Laws altogether fruitleſs, or of little or none Effect, and the Offenders to become bold, obdurate, and uncomfortable:

Your Majeſty therefore would be pleaſed, at the humble Suit of your Commons in this preſent Parliament aſſembled, in the Cauſes ſo highly concerning the Glory of God, the Preſervation of true Religion, of your Majeſty and State, to ſuffer your Highneſs's natural Clemency to retire itſelf, and give Place to Juſtice, and to lay your Royal Command upon all your Miniſters of Juſtice, both Eccleſiaſtical and Civil, to ſee the Laws made againſt Jeſuits, Seminary Prieſts, and Recuſants (of what Kind and Sort ſoever) to be duly and exactly executed without Dread or Delay: And that your Majeſty would be pleaſed likewiſe to take into your own Hands the Penalties due for Recuſancy, and that the ſame be not converted to the private Gain of ſome, to your infinite Loſs, the imboldening of the Papiſts, and Decay of true Religion.

II. Whereas alſo divers painful and learned Paſtors, that have long travelled in the Work of the Miniſtry with good Fruit and Bleſſing of their Labours, who were ever ready to perform the legal Subſcription appointed by the Statute of the 13th of *Elizabeth*, which only concerneth the Confeſſion of the true Chriſtian Faith, and Doctrine of the Sacraments:

Yet for not conforming in Points of Ceremonies, and refuſing the Subſcription directed by the late Canons, have been removed from their Eccleſiaſtical Livings, being their Freehold, and debarred from all Means of Maintenance, to the great Grief of ſundry your Majeſty's well-affected Subjects:

Seeing

Seeing the whole People that want Inſtruction, are by this Means puniſhed, and through Ignorance lye open to the Seducements of Popiſh and ill-affected Perſons.

We therefore moſt humbly beſeech your Majeſty would be graciouſly pleaſed, that ſuch deprived and ſilenced Miniſters may, by Licence or Permiſſion of the Reverend Fathers, in their ſeveral Dioceſſes inſtruct and preach unto their People, in ſuch Pariſhes and Places where they may be employed.

So as they apply themſelves in their Miniſtry to wholeſome Doctrine and Exhortation, and live quietly and peaceably in their Callings, and ſhall not by Writing or Preaching, impugn things eſtabliſhed by publick Authority.

III. Whereas likewiſe through Plurality of Benefices, and Toleration of Non Reſidency in many who poſſeſs not the meaneſt of Livings, with Cure of Souls, the People in divers Places want Inſtruction, and are ignorant and eaſy to be ſeduced, whereby the Adverſaries of our Religion gain great Advantage:

And although the Pluralities and Non Reſidents do frame Excuſe of the ſmalleſt of ſome Livings, and pretend the Maintainance of Learning; yet we find by Experience, that they coupling many of the greateſt Livings, do leave the leaſt helpleſs, and the beſt as ill ſerved and ſupplied with Preachers as the meaneſt:

And where Pluraliſts heaping up many Livings into one Hand, do by that means keep divers learned Men from Maintenance, to the Diſcouragement of Students, and the Hindrance of Learning,

And the Non Reſidents (forſaking or abſenting themſelves from their Paſtoral Charges) do leave the People as a Prey to the Popiſh Seducers:

It might therefore pleaſe your moſt excellent Majeſty, for Remedy of thoſe Evils in the Church, to provide that Diſpenſations for Plurality of Benefices, with Cure of Souls may be prohibited,

And that the Toleration of Non-Reſidency may be reſtrained.

So ſhall true Religion be better upheld, and the People more inſtructed in Divine and Civil Duties.

IV. And foraſmuch as Excommunication is the heavieſt Cenſure for the moſt grievous Offences which the Church doth retain, yet exerciſed and inflicted upon an incredible Number of the common People, by the Subordinate Officers of the Juriſdiction Eccleſiaſtical, moſt commonly for very ſmall Cauſes, grounded upon the ſole Information of a baſe Apparitor,

In which Caſe the Parties, before they can be diſcharged, are driven to exceſſive Expence for Matters of very ſmall Moment, ſo that the richer

richer break through more heinous Offences, and eſcape that Cenſure by Commutation of Penance, to the great Scandal of the Church Government, in the Abuſe of ſo high a Cenſure, the Contempt of the Cenſure itſelf, and Grievance of your Majeſty's poor Subjects.

Wherefore your Majeſty's moſt dutiful Commons moſt humbly beſeech your Highneſs, that ſome due and fit Reformation may be had in the Premiſſes.

To the King's Moſt Excellent Majeſty.

Moſt gracious Sovereign,

YOUR Majeſty's moſt humble Commons aſſembled in Parliament, being moved as well out of their Duty and Zeal to your Majeſty, as out of the Senſe of juſt Grief, wherewith your loving Subjects are generally, through the whole Realm at this Time poſſeſſed, becauſe they perceive their common and ancient Right and Liberty to be much declined and infringed in theſe late Years, do with all Duty and Humility preſent theſe our juſt Complaints thereof to your gracious View, moſt inſtantly craving Juſtice therein, and due Redreſs. *Grievances complained of.*

And although it be true that many of the Particulars, whereof we now complain, were of ſome Uſe in the late Queen's Time, and then not much impugned, becauſe the Uſage of them being then more moderate, gave not ſo great Occaſion of Offence, and conſequently not ſo much Cauſe to enquire into the Right and Validity of them;

Yet the Right being now more thoroughly ſcanned, by reaſon of the great Miſchiefs and Inconveniencies which the Subjects have thereby ſuſtained:

We are very confident that your Majeſty will be ſo far from thinking it a Point of Honour or Greatneſs to continue any Grievance upon your People, becauſe you found them begun in your Predeceſſor's Times, as you will rather hold it a Work of great Glory to reform them.

Since your Majeſty knoweth well, that neither Continuance of Time, nor Errors of Men, can or ought to prejudice Truth or Juſtice;

And that nothing can be more worthy of ſo worthy a King, nor more anſwerable to the great Wiſdom and Goodneſs which abound in you, than to underſtand the Griefs, and redreſs the Wrongs of ſo loyal and well deſerving People.

In this Confidence, *dread Sovereign*, we offer theſe Grievances (the Particulars whereof are hereunder ſet down) to your gracious Conſideration.

And we offer them out of the greateſt Loyalty and Duty, that Subjects can bear to their Prince.

Moſt humbly and inſtantly beſeeching your Majeſty, as well for Juſtice ſake (more than which, as we conceive, in theſe Petitions we do not ſeek) as alſo for the better Aſſurance of the State and general Repoſe of your faithful and loving Subjects, and for Teſtimony of your gracious Acceptation of their full Affections; declared as well by their joyful receiving of your Majeſty at your happy Entrance into theſe Kingdoms, which you have been often pleaſed with Favour to remember, as alſo by their extraordinary Contributions granted ſince unto you, ſuch as have been never yielded to any former Prince, upon the like Terms and Occaſions, That we may receive to theſe our Complaints your moſt gracious Anſwer.

Which we cannot doubt but will be ſuch as may be worthy of your Princely Self, and will give Satisfaction and great Comfort to all your loyal and moſt dutiful loving Subjects, who do and will pray for the happy Preſervation of your moſt Royal Majeſty.

New Impoſitions.

The Policy and Conſtitution of this your Kingdom appropriates unto the Kings of this Realm, with the Aſſent of the Parliament, as well the Sovereign Power of making Laws, as that of Taxing, or Impoſing upon the Subjects Goods or Merchandizes, wherein they have juſtly ſuch a Propriety, as may not without their Conſent be altered or changed.

This is the Cauſe that the People of this Kingdom, as they ever ſhewed themſelves faithful and loving to their Kings, and ready to aid them in all their juſt Occaſions with voluntary Contributions;

So have they been ever careful to preſerve their own Liberties and Rights, when any thing hath been done to prejudice or impeach the ſame.

And therefore, when their Princes, occaſioned either by their Wars, or their over great Bounty, or by any other Neceſſity, have without Conſent of Parliament ſet Impoſitions either within the Land, or upon Commodities either exported or imported by the Merchants; they have in open Parliament complained of it, in that it was done without their Conſents;

And thereupon never failed to obtain a ſpeedy and full Redreſs, without any Claim made by the Kings of any Power or Prerogative in that Point.

And though the Law of Propriety be originally and carefully preſerved by the Common Laws of this Realm, which are as ancient as the Kingdom itſelf;

Yet theſe famous Kings, for the better Contentment and Aſſurance of their loving Subjects, agreed, That this old fundamental Right ſhould be farther declared and eſtabliſhed by Act of Parliament:

Wherein

Wherein it is provided, That no ſuch Charges ſhould ever be laid upon the People, without their common Conſent; as may appear by ſundry Records of former Times.

We therefore, your Majeſty's moſt humble Commons aſſembled in Parliament, following the Example of this worthy Care of our Anceſtors, and out of a Duty to thoſe for whom we ſerve, finding that your Majeſty, without Advice or Conſent of Parliament, hath lately in Time of Peace ſet both greater Impoſitions, and far more in Number, than any your noble Anceſtors did ever in Time of War, have with all Humility preſumed to preſent this moſt juſt and neceſſary Petition unto your Majeſty, That all Impoſitions ſet without the Aſſent of Parliament may be quite aboliſhed and taken away: And that your Majeſty, in imitation likewiſe of your noble Progenitors, will be pleaſed, That a Law may be made during this Seſſion of Parliament, to declare, That all Impoſitions ſet or to be ſet upon your People, their Goods or Merchandiſes, ſave only by common Aſſent in Parliament, are and ſhall be void: Wherein your Majeſty ſhall not only give your Subjects good Satisfaction in point of their Right, but alſo bring exceeding Joy and Comfort to them which now ſuffer; partly through the abating the Price of native Commodities, and partly through the raiſing of all Foreign; to the Overthrow of Merchants and Shipping; the cauſing of a general Dearth and Decay of Wealth among your People, who will be hereby no leſs diſcouraged than diſabled to ſupply your Majeſty, when Occaſion ſhall require it.

Commiſſions Eccleſiaſtical.

Whereas by the Statute 1 *Eliz. cap.* 1. intituled, *An Act reſtoring to the Crown the Ancient Juriſdiction over the State Eccleſiaſtical*, &c. Power was given to the Queen and her Succeſſors, to conſtitute and make a Commiſſion in Cauſes Eccleſiaſtical;

The ſaid Act is found to be inconvenient and of dangerous Extent in divers Reſpects:

Firſt, For that it enableth the making of ſuch a Commiſſion, as well to any one Subject born as to more.

Secondly, For that, whereas by the Intention and Words of the Statute, Eccleſiaſtical Juriſdiction is reſtored to the Crown, and your Highneſs by that Statute enabled to give only ſuch Power Eccleſiaſtical to the ſaid Commiſſioners; Yet under Colour of ſome Words in that Statute, where the Commiſſioners are authoriſed to execute their Commiſſion, according to the Tenor and Effect of your Highneſs's Letters Patents, and by Letters Patents grounded thereupon; The ſaid Commiſſioners do fine and impriſon, and exerciſe other Authority not belonging to the Eccleſiaſtical Juriſdiction reſtored by that Statute; which

which we conceive to be a great Wrong to the Subject: And that thoſe Commiſſioners might as well, by Colour of thoſe Words, if they were ſo authoriſed by your Highneſs's Letters Patents, fine without Stint, and impriſon without Limitation of Time: As alſo, according to Will and Diſcretion, without any Rules of Law, Spiritual or Temporal, adjudge and impoſe utter Confiſcation of Goods, Forfeiture of Lands; yea and the taking away of a Limb, and of Life itſelf: And this for any Matter whatſoever pertaining to Spiritual Juriſdiction. Which never was nor could be meant by the Makers of that Law.

Thirdly, For that by the Statute, the King and his Succeſſors (however your Majeſty hath been pleaſed out of your gracious Diſpoſition otherwiſe to order) make and direct ſuch Commiſſion into all the Counties and Dioceſes, yea into every Pariſh of *England*; and thereby all Cauſes may be taken from Juriſdiction of Biſhops, Chancellors and Archdeacons, and Laymen ſolely to be enabled to excommunicate and exerciſe all other Cenſures Spiritual.

Fourthly, That every petty Offence pertaining to Spiritual Juriſdiction, is by Colour of the ſaid Words and Letters Patents, grounded thereupon, made ſubject to Excommunication and Puniſhment by that ſtrange and exorbitant Power and Commiſſion; whereby the leaſt Offenders, not committing any thing of any enormous or high Nature, may be drawn from the moſt remote Places of the Kingdom to *London* or *York*; which is very grievous and inconvenient.

Fifthly, For that Limit touching Cauſes ſubject to this Commiſſion, being only with theſe Words; *viz.* "Such as pertain to Spiritual or "Eccleſiaſtical Juriſdiction;" It is very hard to know what Matters or Offences are included in that Number: And the rather becauſe it is unknown, what ancient Canons or Laws Spiritual are in Force, and what not; From hence ariſeth great Inconveniency, and Occaſion of Contention.

And whereas upon the ſame Statute a Commiſſion Eccleſiaſtical is made, therein is Grievance apprehended thus:

Firſt, For that thereby the ſame Men have both Spiritual and Temporal Juriſdiction, and may both force the Party by Oath to accuſe himſelf of any Offence, and alſo enquire thereof by a Jury: And laſtly, may inflict for the ſame Offence at the ſame Time, and by one and the ſame Sentence, both a Spiritual and a Temporal Juriſdiction.

Secondly,

Secondly, Whereas upon Sentences of Deprivation or other Spiritual Cenſures given by Force of Ordinary Juriſdiction, an Appeal lyeth for the Party aggrieved, that is here excluded by expreſs Words of the Commiſſion: Alſo here is to be a Trial by Jury, yet no Remedy by Traverſe nor Attaint; neither can a Man have any Writ of Error, though a Judgment or Sentence be given againſt him, amounting to the taking away of all his Goods, and impriſoning of him during Life, yea, to the adjudging him in caſe of *Præmunire*, whereby his Lands are forfeited, and he out of the Protection of the Law.

Thirdly, That whereas Penal Laws and Offences againſt the ſame cannot be determined in other Courts, or by other Perſons than by thoſe truſted by Parliament with the Execution thereof; yet the Execution of many ſuch Statutes (divers whereof were made ſince the firſt of *Eliz.*) are commended and committed to theſe Commiſſioners Eccleſiaſtical, who are either to inflict the Puniſhment contained in the Statute being *Præmunire*, and of other high Nature, and ſo enforce a Man upon his own Oath to accuſe and expoſe himſelf to thoſe Puniſhments, or elſe to inflict other Temporal Puniſhments at their Pleaſure. And yet beſides and after that done, the Party ſhall be ſubject, in the Courts mentioned in the Acts, to Puniſhment by the ſame Acts appointed and inflicted. Which we think very unreaſonable.

Fourthly, That the Commiſſion giveth Authority to enforce Men called into Queſtion, to enter into Recognizance, not only for Appearance from Time to Time, but alſo for Performance of whatſoever ſhall be by the Commiſſioners ordered.

And alſo that it giveth Power to enjoin Parties defendant or accuſed to pay ſuch Fees to the Miniſters of the Court, as by the Commiſſioners ſhall be thought fit.

And touching the Execution of the Commiſſion, it is found grievous theſe Ways among other:

Firſt, For that Laymen are by the Commiſſioners puniſhed for ſpeaking (otherwiſe than in Judicial Places and Courſes) of the Simony and other Miſdemeanors of the Spiritual Men, though the Thing ſpoken be true, and the Speech tending to the inducing of ſome condign Puniſhment.

Secondly, In that theſe Commiſſioners uſually appoint and allot to Women diſcontented at and unwilling to live with their Huſbands, ſuch Portion and Allowance for preſent Maintenance, as to them

ſhall ſeem meet; To the great Encouragement to Wives to be diſobedient and contemptuous againſt their Huſbands.

Thirdly, In that their Purſuivants and other Miniſters employed in the Apprehenſion of ſuſpected Offenders in any thing ſpiritual, and in the ſearching for any ſuppoſed ſcandalous Books, uſe to break open Mens Houſes, Cloſets and Deſks, rifling all Corners and ſecret Cuſtodies, as in Caſes of High Treaſon or Suſpicion thereof.

All which Premiſes, amongſt other Things conſidered, your Majeſty's moſt loyal and dutiful Commons, in all Humbleneſs beſeech you, that, for the eaſing of them, as well from the preſent Grievance, as from the Fear and Poſſibility of greater in Times future, your Highneſs would vouchſafe your Royal Aſſent and Allowance to and for the ratifying of the ſaid Statute, and the reducing thereof, and conſequently of the ſaid Commiſſion, to reaſonable and convenient Limits, by ſome Act to be paſſed in the preſent Seſſion of Parliament.

Proclamations. Amongſt many other Points of Happineſs and Freedom, which your Majeſty's Subjects of this Kingdom have enjoyed under your Royal Progenitors, Kings and Queens of this Realm, there is none which they have accounted more dear and precious than this, to be guided and governed by certain Rule of Law, which giveth both to the Head and Members that which of Right belongeth to them; and not by any uncertain or arbitrary Form of Government.

Which, as it hath proceeded from the Original and Conſtitution and Temperature of this Eſtate, ſo hath it been the principal Means of upholding the ſame in ſuch Sort, as that their Kings have been juſt, beloved, happy and glorious; and the Kingdom itſelf peaceable, flouriſhing and durable, ſo many Ages.

And the Effect, as well of the Contentment that the Subjects of this Kingdom have taken in this Form of Government, as alſo of the Love, Reſpect and Duty, which they have, by reaſon of the ſame, rendered unto their Princes, may appear in this, That they have, as Occaſion hath required, yielded more extraordinary and voluntary Contributions to aſſiſt their Kings, than the Subjects of any other known Kingdom whatſoever.

Out of this Root hath grown the indubitable Right of the People of this Kingdom, not to be made ſubject to any Puniſhment that ſhall extend to their Lives, Lands, Bodies or Goods, other than ſuch as are ordained by the common Laws of this Land, or the Statutes made by their common Conſent in Parliament.

Never-

Nevertheleſs, it is apparent, both that Proclamations have been of late Years much more frequent than heretofore, and that they are extended, not only to the Liberty, but alſo to the Goods, Inheritances, and Livelihood of Men; ſome of them tending to alter ſome Points of the Law, and make them new:

Other ſome made ſhortly after a Seſſion of Parliament, for Matter directly rejected in the ſame Seſſion:

Others appointing Puniſhments to be inflicted before lawful Trial and Conviction;

Some containing Penalties in form of Penal Statutes;

Some referring the Puniſhment of Offenders to the Courts of arbitrary Diſcretion, which have laid heavy and grievous Cenſures upon the Delinquents:

Some, as the Proclamation for Starch, accompanied with Letters commanding Enquiry to be made againſt the Tranſgreſſors at the Quarter Seſſions:

And ſome vouching former Proclamations, to countenance and warrant the latter; as by a Catalogue hereunder written more particularly appeareth.

By reaſon whereof there is a general Fear conceived and ſpread amongſt your Majeſty's People, that Proclamations will by degrees grow up and increaſe to the Strength and Nature of Laws.

Whereby not only that ancient Happineſs [Freedom] will be as much blemiſhed (if not quite taken away) which their Anceſtors have ſo long enjoyed;

But the ſame may alſo (in Proceſs of Time) bring a new Form of Arbitrary Government upon the Realm.

And this our Fear is the more increaſed, by occaſion as well of certain Books lately publiſhed, which aſcribe a greater Power to Proclamations than heretofore hath been conceived to belong unto them;

As alſo of the Care taken to reduce all the Proclamations made ſince your Majeſty's Reign into one Volume, and to print them in ſuch Form as Acts of Parliament formerly have been, and ſtill are uſed to be; which ſeemeth to imply a Purpoſe to give them more Reputation and more Eſtabliſhment than heretofore they have had.

We therefore, your Majeſty's humble Subjects, the Commons in this Parliament aſſembled, taking theſe Matters into our Conſideration, and weighing how much it doth concern your Majeſty, both in Honour and Safety, that ſuch Impreſſions ſhould not be enforced to ſettle in your Subjects Minds, have thought it to appertain to our Duties, as well towards your Majeſty, as to thoſe that have truſted and ſent us to their Service, to preſent unto your Majeſty's View theſe Fears and Griefs of your People; and to become humble Suitors unto your

your Majeſty, That thenceforth no Fine or Forfeiture of Goods, or other pecuniary or corporal Puniſhment, may be inflicted upon your Subjects (other than Reſtraint of Liberty, which we alſo humbly beſeech may be but upon urgent Neceſſity, and to continue but 'till other Order may be taken by Courſe of Law) unleſs they ſhall offend againſt ſome Law or Statute of this Realm in force at the Time of their Offence committed.

And for the greater Aſſurance and Comfort of your People, That it will pleaſe your Majeſty, to declare your Royal Pleaſure to that Purpoſe, either by ſome Law to be made in this Seſſion of Parliament, or by ſome ſuch other Courſe (whereof your People may take Knowledge) as to your princely Wiſdom ſhall ſeem moſt convenient.

A Catalogue of ſome of the Proclamations complained of.

I. Proclamations importing Alterations of ſome Points of the Law, and making new:

11 *January*, 1 *Jac. fol.* 57. forbiddeth chuſing of Knights and Burgeſſes Bankrupt or outlawed; and commandeth Choice of ſuch as are not only taxed to Subſidies, but alſo have ordinarily paid and ſatisfied the ſame, *fol.* 57.

If Returns be made contrary to Proclamation, they are to be rejected as unlawful and inſufficient, *fol.* 60.

25 *Auguſt*, 5 *Jac. fol.* 151. That the Proclamation ſhould be a Warrant to any Officer or Subject to ſeize Starch, and to diſpoſe or deſtroy any Stuff, *&c.* And reſtraineth all Men not licenced to make Starch, *fol.* 154.

II. A Proclamation made ſhortly after Parliament, for Matter directly rejected the precedent Seſſion:

1 *March*, 2 *Jac. fol.* 112. A Proclamation for building with Brick, after a Bill to that End rejected.

III. Proclamations touching the Freehold Livelihood of Men:

16 *September*, 1 *Jac. fol.* 41. Raiſing and pulling down Houſes authoriſed, and Prohibition to build them again at any Time.

12 *October*, 5 *Jac. fol.* 160. Forbidding building and taking away the Materials; and appointing the Owners Land to be let by other Men at what Price they pleaſe, *fol.* 101.

IV. Proclamations, referring Puniſhments to be done by Juſtices of the Peace, Mayors, Bailiffs, Conſtables, and other Officers; or Seizure by

by Perſons who have no Authority to enquire, hear and determine of thoſe Offences; ſo it is to be inflicted before lawful Trial and Conviction.

8 *January*, 2 *Jac. fol.* 72. A Proclamation for folding Wools, *&c.*

23 *Auguſt*, 5. *Jac. fol.* 151. A Seizure of Starch, *&c.*

V. Proclamations penned with Penalties, in form of Penal Statutes:

4 *November*, 1 *Jac. fol.* ... Pain of Confiſcation of Goods.

18 *January*, 2 *Jac. fol.* 72. Ten Days Impriſonment, and ſtanding in the Pillory.

Juſtices of Peace to forfeit Twenty Pounds if they ſee not the Proclamation of folding Wools executed.

23 *Auguſt*, 5 *Jac. fol.* 151. Forfeiture of one Moiety of Starch, *&c.* ſeized, *&c.*

VI. Puniſhment of Offenders in Courts of Arbitrary Diſcretion, as *Star-Chamber:*

1 *March*, 2 *Jac. fol.* 102. Proclamation for Building.

12 *October*, 5 *Jac. fol.* 159. A Proclamation for Building.

July, 6 *Jac. fol.* 177, Proclamation for Starch.

25 *July*, 6 *Jac. fol.* 180. Proclamation for Building.

VII. Former Proclamations become Precedents, and vouched in latter Proclamations:

18 *June*, 2 *Jac. fol.* 75. avoucheth 5 *Ed.* VI. and 4 *Eliz. fol.* 73.

25 *July*, 6 *Jac. fol.* 180. mentioneth former Proclamations againſt Buildings, and explaineth and qualifieth them.

Your Majeſty's Commons, in this Seſſion of Parliament aſſembled, do chearfully acknowledge the Spring and Fountain of publick Juſtice of this State to be originally in your Majeſty.

For the Benefit thereof is conveyed and derived into every Member of this politick Body by your Highneſs's Writs.

Amongſt which none are more honourable for the Support of the common Juſtice of the Realm, than the Writs of *Prohibition*, *Habeas Corpus*, & *De Homine replegiando:* Which Writs have been ever held and found to be a chief Means of Relief unto the poor, diſtreſſed and oppreſſed Subjects of this Kingdom, and can be no Inconvenience at all: Seeing they are no way concluſive againſt any Man, and do draw no Benefit to the Procurers, but rather a fruitleſs Charge, if they be obtained upon any unjuſt Ground or Pretence.

In the free granting of, and proceeding upon, ſome of which Writs, eſpecially that of Prohibition, there hath of late been obſerved to be ſome Obſtruction, by reaſon that upon the Complaints and the Importunity of ſome, who deſire the Support of Inferior Courts againſt the Principal Courts of the Common Law, (wherein your Majeſty hath been greatly troubled) you have taken into your Royal Conſideration the ſeveral Extents of the Juriſdiction of the ſaid ſeveral Courts.

Since which Time the ſaid Writs have been more ſparingly granted, and with ſtricter Cautions than anciently hath been accuſtomed.

It is therefore moſt humbly deſired that it may pleaſe your Majeſty, (whoſe Glory is never more conſpicuous than when the pooreſt of the Commonality are bleſſed with the Influence of the ancient Beams of Juſtice) to require your Judges in the Courts of *Weſtminſter* to grant the ſaid Writs, in Caſes wherein ſuch Writs do lye, and by Law are grantable.

And in ſuch Sort as that ſuch Perſons whoſe Bodies being either committed to Priſon, or their Cauſes like to recover great Prejudice by Proceedings againſt them in Times of Vacation, may not be debarred nor deferred from having the ſpeedy Relief and Benefit of thoſe Writs, more than in former Times.

Four Shires. Foraſmuch as the Exerciſe of Authority over the Counties of *Glouceſter*, *Hereford*, *Wigorn*, and *Salop*, by the Preſident and Council of *Wales*, by Way of Inſtructions upon a Pretext of a Statute made in the 34th Year of the Reign of King *Henry* VIII, is conceived not to be warranted by that, or any other Law of this Realm of *England*.

And for that in the ſecond Seſſion of this preſent Parliament, there did a Bill paſs the Houſe of Commons, whereby it was declared that the true Intent and Meaning of that beforementioned Statute, was not thereby to ſubject theſe Countries to that Kind of Government by Inſtructions;

And yet notwithſtanding the Inhabitants of thoſe Counties are ſince utterly diſcouraged, and in effect debarred from the Tryal of the Right of that Kind of Juriſdiction over thoſe Counties, by the ordinary Courſe of the common Laws of this Land, by Reaſon of Prohibitions which were heretofore frequently granted (upon Suggeſtion that thoſe Counties are not Part of *Wales*, or of the Marſhes of the ſame, which is the very Point in Queſtion) are now very hard to be obtained, except in Caſes where thoſe of that Council do exceed the Inſtructions ſet down to them by your Majeſty:

As alſo for that, in Caſes where Actions have been brought at the Common Law, whereby that Queſtion might have come to Deciſion, the Plantiffs have been ſtopped, ſometimes by Injunctions out of your Majeſty's Court of *Chancery* from their Proceedings, ſometimes before, ſometimes after Judgments, and alſo by Impriſonment,

The

The Precedent of which Proceedings do concern all your Majeſty's loyal and dutiful Subjects of this Kingdom, as well in reſpect of the ſtopping of the free Courſe of Juſtice, as alſo by reaſon that if that kind of Juriſdiction were at firſt extended over theſe four Counties, and be now ſtill continued without Warrant of Law; the Conſequence of this Example may in future Times give Countenance to the erecting of like Juriſdictions in other Places of this Realm:

And foraſmuch as your Majeſty was pleaſed to command all the Judges to conſider of this Queſtion, and that they thereupon beſtowed very many Days in hearing the Cauſe argued by learned Counſel on both Sides,

And in viewing and conſidering great Numbers of Records, produced before them concerning that Cauſe;

Whereby they have (no doubt) truly informed themſelves of the Right;

It is therefore the moſt humble Petition of the Commons in this preſent Parliament aſſembled, that your moſt excellent Majeſty will alſo be pleaſed to command that the Judges may deliver their Opinion upon that ſo exact and deliberate hearing which was had before them, concerning the Right of the aforeſaid Juriſdiction over thoſe four Counties, by Force of that Statute;

And that the Opinion which they ſhall deliver therein, may be in ſuch Sort publiſhed, as that all your Majeſty's Subjects whom it may concern, may have means to take Knowledge thereof.

And that your Majeſty will vouchſafe to declare it; by your moſt princely Pleaſure, that any of your Majeſty's Subjects who may have Occaſion thereof, may try his or their Right in that Point, by the due and ordinary Courſe of the Common Law, either by ſuing out of Prohibitions, or any other your Majeſty's Writs, without Reſtraint;

And that if the ſaid Juriſdiction over theſe four Counties ſhall appear to your Majeſty by the Opinion of the Judges, or otherwiſe, not to be warranted by Law, that then your Majeſty will be pleaſed, out of your moſt princely and gracious Favour towards all your loyal, dutiful Subjects, to order the ceaſing of the ſaid Juriſdiction over thoſe Counties:

To the great Comfort of the Inhabitants of thoſe Counties, and of the reſt of your Subjects of all the Kingdom.

New Drapery.

Complaint was made in all humble Manner, the ſecond Seſſion of this preſent Parliament, of many Diſorders, Outrages, and Oppreſſions, committed upon Occaſion of Letters Patents granted to the Duke of *Lenox*, for ſearching and ſealing of Stuffs and Manufactures, called by the Name of New Draperies.

Which Patent we held in all, or the moſt Part of it, to be queſtionable, and in many apparently unlawful, and the Execution thereof

we

we found ſtretched by the Farmers and Deputies beyond the Extent of the ſaid Letters Patents, as appears in the Particulars ſet down in the ſaid Grievance.

To which it pleaſed your Majeſty to give this gracious Anſwer; "That the Validity of the ſaid Patent ſhould be left to be judged by "the Law,

"And whenſoever any Abuſe ariſing in the Execution thereof ſhould "appear, it ſhould ſeverely be puniſhed,"

Which was for that Time to our good Satisfaction.

Yet finding by divers Complaints made now in Parliament, that not only the ſaid Letters Patents are ſtill in Force, and the Validity of them undecided by Judgment, but Diſorders in the Execution of them are ſo far from being reformed, that they multiply every Day, to the Grievance of your Majeſty's Subjects:

And thoſe of the poorer Sort, who exerciſing theſe Manufactures, are ſubject to much Oppreſſion, to the great Hindaance of ſome, and utter undoing of many, as hath appeared in the Particularities of the Complaints preſented to us:

Our humble Deſire is, that your Majeſty will be pleaſed, according to your former Reſolution, to give Order that this Cauſe, which hath thus long hung in ſuſpence, be ſpeedily brought to Judgment:

And that before all the Judges, becauſe it concerneth all the Subjects of the Land.

And in the mean Time that the Execution of the ſaid Letters Patents, ſo far forth as they concern the ſaid New Drapery, may be ſuſpended till Judgment be given:

Whereby your Subjects, who do in all Humility preſent this Grievance unto your Majeſty, may be relieved, and have no Occaſion to reiterate their Complaints.

Licence of Wines.

Whereas by ancient and late Statutes it hath been enacted, That Wines ſhould be retailed at ſuch low Rates and Prices, as for this fifty Years paſt they could not be afforded,

And for Redreſs thereof, it was ordained by a Statute in the 5th Year of the late Queen *Elizabeth*, That (thoſe former Laws notwithſtanding) Wines might be ſold at ſuch Prices, as by Proclamation from Time to Time to be made by Conſent of many great Offences, ſhould be publiſhed and ſet down:

Which Proclamation, nevertheleſs, the late Queen and your moſt excellent Majeſty have been drawn to forbear, upon the earneſt Suit of certain Perſons, who therein only intended their private Game:

By Reaſon whereof, both great Sums of Money in Fines, Rents, and Annual Payments, have been gotten and raiſed unto the ſaid Perſons, and their Aſſignees, and great Damage and Prejudice hath likewiſe fallen and light upon your People:

Not

Not only by enhancing the Prices of Wines, licencing over many Taverns, and appointing of unmeet Perſons, in unfit Places, to keep the ſame:

But alſo by reaſon that corrupt, mingled, evil, and unwholeſome Wines have been uttered and ſold, to the great Hurt of the Health of your Highneſs's People;

One Man ſometimes engroſſing all the Licences deſigned for that Place.

Whereupon Complaint being made to your Majeſty, amongſt other Grievances of your People,

In the ſecond Seſſion of this preſent Parliament, your Highneſs was pleaſed to anſwer, That your Grants in that Behalf were no other than ſuch as were warranrable by the Law.

Whereas the Grievance was the greater, for that all Laws concerning the Sale of Wines being intended and conceived to ſtand and be repealed, there were nevertheleſs, by the overſight of them which were truſted in that Buſineſs, caſually omitted, and left unrepealed, certain obſolete Laws impoſſible to be obſerved:

As namely one, in the Time of King *Edward* I, commanding Wines to be ſold at one Shilling the Sextern.

And one other made in the 28th Year of King *Henry* VIII, prohibiting all Perſons, under Penalty, to ſell any *French* Wines above Eight Pence the Gallon; and other Wines, as Sacks and Sweet Wines, above One Shilling the Gallon:

And one Branch of a Statute made in the 7th Year of King *Edward* VI, prohibiting Men to ſell any Wines by Retail in their Houſes.

Whereupon your Majeſty hath been induced and drawn to ground new Patents of Diſpenſation, and to grant the Benefit thereof unto the Lord Admiral:

Whereby the like Diſcommodities and Inconveniencies have ſince enſued unto the Common-wealth, as formerly did ariſe and grow upon the other repealed Laws, whereof in the former Petitions of your Subjects, exhibited unto your Majeſty in the ſaid ſecond Seſſion, your Highneſs never had any direct and clear Information.

May it therefore pleaſe your moſt excellent Majeſty, at the humble Requeſt of your Commons, (who have taken into Conſideration the greateſt Charges and Expences which the ſaid Lord Admiral hath been at in your Majeſty's Service, and have conſidered likewiſe the preſent Licences and Grants, for valuable Conſiderations unto many Hundreds of your Highneſs's Subjects, which without great Loſs to the ſaid Grantees, cannot be ſo ſuddenly made void) out of your Princely Wiſdom and Goodneſs, wherein you have profeſſed not to extend and ſtrain your Prerogative Royal, againſt the publick Good of your

People, for the particular Gain of any private Perſons to vouchſafe:

That from thenceforth there may no more Grants of that Nature be made unto any of your Subjects whomſoever.

But that the ſaid Statute of the 5th of *Elizabeth* for the apprizing of Wines, to be publiſhed by Proclamation, as Time and Occaſion ſhall require, may be put in Execution.

And that your Majeſty will likewiſe vouchſafe to grant your Royal Aſſent to a Bill of Repeal of the ſaid obſelete Statutes, and all other whereupon any ſuch *Non Obſtantes* and Diſpenſations might be grounded.

In which Statute of Repeal, Proviſion ſhall be made for the Indemnity of all ſuch, as under your Majeſty's Great Seal have already procured Licence for ſuch Sale of Wines.

Ale Houſes. Whereas by the Laws of this your Majeſty's Realm of *England*, no Taxes, Aids, or Impoſitions of any Kind whatſoever, ought or can be laid or impoſed upon your People, or upon any of their Goods or Commodities, but only by Authority and Conſent of Parliament.

Which being undoubtedly the ancient and fundamental Law of the Land, is yet for more abundant Clearneſs expreſly declared in ſundry Acts of Parliament, made and enacted in the Time of ſundry your Majeſty's Progenitors, the nobleſt and moſt prudent Kings of this Realm.

Your Commons with juſt Grief do complain unto your Majeſty of the late Tax and Impoſition laid and impoſed yearly upon ſuch as are allowed to keep Victualling Houſes, or ſell Ale and Beer by Retail.

Which Impoſition not being taxed by Aſſent of Parliament, but commanded and directed only by Letters and Inſtructions,

Your Commons are perſuaded that the ſame proceeded rather from Miſinformation, than by the Direction and Judgment of your moſt noble and and royal Heart.

Wherefore your ſaid Commons, knowing the Grief of your People in this Behalf, do (according to their Duties) in all Humility inform and ſignify unto your Majeſty,

Firſt, That the ſaid Taxation being ſingular and without Example, and it is in itſelf a Precedent of dangerous Conſequence, and (as your People fear) may eaſily (in Time) be extended farther, as to Badgers of Corn, Makers of Malt, Drovers of Cattle, and ſuch like, who in ſuch ſort are to be licenced by Juſtices of the Peace, as thoſe Perſons are, upon whom, at this Time, this preſent Tax is charged and laid.

Secondly, Such Houſes being often Times (at the beſt) Harbours of Idleneſs, Drunkenneſs, Whoredom, and all manner of Villanies, the Licences

Licences are now (the honeſter Sort in moſt Places refuſing to undergo the new Charge) rented and taken by the looſer and baſer Sort of People, who have no Conſcience how they gain.

By reaſon whereof all manner of Vice and evil Behaviour, is likely every Day to increaſe.

Neither can the Juſtices of the Peace conveniently prevent the ſame:

For that the Perſons licenced under the late Contribution, affirm with Clamour, that they have a Toleration for a Year, and that ſuch Perſons are not Friends unto the Crown that ſeek to ſuppreſs them, and thereby to diminiſh your Majeſty's Revenues.

Thirdly, Many Juſtices of the Peace, (being ſworn to execute their Office) which for this Particular conceive to be, that Ale-Houſe Keepers formerly licenced, are not to be ſuppreſſed without juſt and reaſonable Cauſe, cannot be ſatisfied touching their ſaid Oath, but are much diſtracted and perplexed what to do (the late Inſtructions notwithſtanding) againſt ſuch Perſons as otherwiſe being not known to be of evil Behaviour, only to refuſe to pay this late taxed and impoſed Sum of Money.

In Conſideration whereof, your humble Commons moſt inſtantly beſeech your moſt excellent Majeſty, that the former Letters and Inſtructions may be countermanded or ſtayed, and all further Directions and Proceedings in that kind forborn.

Among many Reſemblances which are obſerved to be between natu- *Sea-Coal.*
ral and politick Bodies, there is none more apt and natural than this, that the Diſeaſes of both do not at one Inſtance commonly ſeize upon all Parts:

But beginning in ſome one Part, do by Tract of Time, and by Degrees, get Poſſeſſion of the whole, unleſs by applying of wholeſome and proper Remedies in due Time they may be prevented, which, as it is in many things very viſible, ſo it is in nothing more apparent than in this Matter of Impoſitions:

Which beginning at the firſt, either with foreign Commodities brought in, or ſuch of your own as were tranſported, is now extended to thoſe Commodities, which growing in this Kingdom are not tranſported, but uttered to the Subjects of the ſame:

For Proof whereof, we do in all Humility preſent unto your Majeſty's View the late Impoſition of One Shilling the Chaldron of Sea-Coals, riſing in *Blith* and *Sunderland*, not by Virtue of any Contract or Grant (as in the Coals of *Newcaſtle*) but under a mere Pretext of your Majeſty's moſt Royal Prerogative:

Which

Which Impoſition is not only grievous for the preſent (eſpecially to thoſe of the poorer Sort, the Price of whoſe only and moſt neceſſary Fuel is thereby to their great Grief enhanced) but dangerous alſo for the future, conſidering that the Reaſon of this Precedent may be extended to all the Commodities of this Kingdom.

May it therefore pleaſe your moſt excellent Majeſty, which is the great and ſovereign Phyſician of the Eſtate, to apply ſuch a Remedy as this Diſeaſe may be preſently cured, and all Diſeaſes for Time to come of like Nature prevented.

Theſe Grievances were preſented to his Majeſty, with a Speech of Sir *Francis Bacon*'s, by twelve of the Lower Houſe, the 7th of *July*, 1610, in the fourth Seſſion of Parliament, becauſe the King commanded twelve and no more, *&c.*

And now I come to make ſome neceſſary Reflections.

REFLECTION I.

Concerning Impoſitions.

Coke, lib. 12. fol. 50. Marmaduke Langdale's *Caſe, touching the High Commiſſion*, 6 Jac. primi.

My Lord *Coke* complains, That the Judges had been oftener called before the Lords of the Privy Council in the Beginning of King *James* the Firſt's Reign, than in former Times they had been, which (as he ſays) was much obſerved, and gave much emboldening to the Vulgar.

Idem. lib. 12. fol. 74. Mich. 8 Jac. primi. *A Proclamation cannot make that an Offence, which was not ſo before.*

And tells us, that in *octavo Jacobi* he was ſent for to attend the Lord Chancellor, Lord Treaſurer, Lord Privy Seal, and the Chancellor of the *Duchy*, there being preſent the Attorney, the Sollicitor, and Recorder.

And two Queſtions were moved unto him by the Lord Treaſurer,

The one, if the King by his Proclamation might prohibit new Buildings in and about *London*, *&c.*

The other, if the King might prohibit the making of Starch of Wheat.

And the Lord Treaſurer ſaid, that thoſe were preferred to the King as Grievances, and againſt the Law and Juſtice.

And that the King had anſwered that he would confer with his Privy Council and his Judges, and then he would do Right to them.

To which Sir *Edward* anſwered;

Firſt, That thoſe Queſtions were of great Importance.

Secondly,

Secondly, That this concerned the Anſwer of the King to the Body, *viz.* to the Commons of the Houſe of Parliament.

Thirdly, That he had not heard of thoſe Queſtions until that Morning at nine of the Clock; for the Grievances were preferred, and the Anſwer made, when he was in his Circuit.

Fourthly, and laſtly, That both the Proclamations which then were ſhewed him, were promulgated *anno 5 Jacobi*, after his Time of Attorneyſhip.

And for theſe Reaſons he humbly deſired them that he might have Conference with his Brethren the Judges about the Anſwer of the King, and then to make an unadviſed Anſwer according to Law and Reaſon.

To which the Lord Chancellor ſaid, That every Precedent had firſt a Commencement, and that he would adviſe the Judges to maintain the Power and Prerogative of the King.

And in Caſes in which there was no Authority and Precedent, to leave it to the King, to order it according to his Wiſdom, and for the Good of his Subjects:

Or otherwiſe the King would be no more than the Duke of *Venice*.

And that the King was ſo much reſtrained in his Prerogative, that it was to be feared the Bonds would be broken.

And the Lord Privy Seal ſaid, That the Phyſician was not always bound to a Precedent, but to apply his Medicine according to the Quality of the Diſeaſe.

And all concluded, That it ſhould be neceſſary at that Time to confirm the King's Prerogative by the Judges Opinion, although that there were not any former Precedent or Authority in Law; for every Precedent ought to have a Commencement in Law.

To which Sir *Edward Coke* anſwered, That true it was that every Precedent had a Commencement, but when Authority and Precedent were wanting, there is need of great Conſideration, before that any thing of Novelty ſhould be eſtabliſhed, and to provide that that be not againſt the Law of the Land:

For he ſaid, That could not change any Part of the Common Law, nor create any Offence by his Proclamation, which was not an Offence before, without Parliament.

But at that Time, proceeds the Chief Juſtice,

He only desired to have Time of Consideration and Conference with his Brothers:

For *deliberandum est diu quod statuendum est semel.*

To which the Sollicitor said, That divers Sentences were given in the *Star Chamber*, upon the Proclamations against Building:

And that the Chief Justice himself had given Sentence in divers Cases against the said Proclamation.

To which the Chief Justice answered, That Precedents were to be seen, and Considerations to be had, of that upon Conference with his Brethren; for that,

Melius est recurrere quam male currere.

And the Indictment *concludes contra Leges & Statuta*, but he never heard an Indictment concluded *contra Regiam proclamationem.*

At last he tells us that this Motion was allowed, and the Lords appointed the two Chief Justices, Chief Baron, and Baron *Altham*, to have Consideration of it.

This Instance, I conceive, speaks full to my Purpose, and proves three Things:

I. That about that Time the King's Proclamations began to grow up and increase to the Strength and Nature of Laws. And

II. That by this Means they brought in by Degrees a new Form of Arbitrary Government upon the Realm.

III. And all this brought to pass by the influential Power which the great Officers of State had over the Judges of *Westminster Hall*, inveigling or awing them to give extrajudicial Opinions, thereby to shock the true ancient Liberty of the *English* Monarchy, and make it absolute and despotical.

REFLECTION II.

Concerning New Impositions.

The Commons in their Grievances said, and said truly, That the Policy and Constitution of this Kingdom appropriates to the Kings of this Realm, with the Assent of Parliament, the Sovereign Power of taxing or imposing upon the Subjects, Goods, or Merchandizes, wherein they have justly such a Propriety as may not, without their Consent, be altered or changed.

And therefore the Commons prayed the King, that all Impoſitions ſet or to be ſet upon his People, their Goods, or Merchandizes, ſave only by common Aſſent in Parliament, might be declared void.

Now the Reaſon of this was, by occaſion of a then late Judgment which had been given upon an Information in the *Exchequer* againſt *Bates*, in *Michaelmas* Term, *quarto Jacobi primi*.

Lane's Rep. fol. 22. *An Information againſt* Bates, Mich. 4 Jac. 1. *in the* Exchequer.

In which Information it was recited, That the King by his Letters Patents under his Great Seal, had commanded his Treaſurer, That he ſhould command his Cuſtomers and Receivers to aſk and receive of every Merchant Denizen, who brought within any Port within his Dominions any Currants, five Shillings a Hundred for Impoſt, above Two Shillings and Six Pence, which was the Poundage by the Statute *primo Jacobi* of every Hundred, which five Shillings *Bates* refuſed to pay, becauſe it was impoſed unjuſtly and unduly againſt the Law of the Land, as he pleaded.

So that the Queſtion between the King and *Bates*, being whether the King, without Aſſent of Parliament, might ſet Impoſitions upon Wares and Goods of Merchants exported and imported, out of and into this Realm:

The Barons of the *Exchequer* gave Judgment for the King, againſt which the Commons complained.

But no Redreſs being made of this Grievance by the King as ſoon as the Parliament 12 *Jacobi* met,

The Commons fell again to debate the Legality of that Judgment, as appears by what follows out of the Lords Journal.

Die

Die Lunæ, videlicet 23 Die May, 1614.

Journal. Dom. Procer. 12 Jac. I.

Archiepiſc. *Cantab.*
Archiepiſc. *Eborum.*
Epiſc. *Dunelm.*
Epiſc. *London.*
Epiſc. *Winton.*
Et 11 alii Epiſc.

Dominus *Elleſmere*, Cancellar. *Angl.*
Comes *Nottingham.* Admirallus & Seneſchallus.
Comes *Suffol.* Camerar. Hoſpitii Regis.
Comes *Salop.* & 15 alii Comites.
Vicecomes *Liſle*, } Et 34 alii
Dominus *Bergevenny*, } Barones.

THE Lord Chancellor remembred to the Lords the Meſſage on *Saturday* laſt ſent from the Lower Houſe, whereby the Knights, Citizens, and Burgeſſes of that Houſe did pray a Conference with their Lordſhips, touching the Point of Impoſitions, referring the Number, Time, and Place to their Lordſhips, deſiring only to be forborn that ſame Day, becauſe being then imployed upon other Service, they could not intend that Buſineſs.

Secondly, His Lordſhip did briefly put them in mind of the Anſwer, which from hence was returned to the Lower Houſe, *viz.*

That the Lords had taken Notice of their Meſſage, and would with the ſooneſt Conveniency ſend Anſwer by Meſſengers of their own.

Then his Lordſhip likewiſe remembred, that the Meſſengers of the Lower Houſe, being with the Anſwer aforeſaid diſmiſſed, the Lords did by general Conſent agree, That becauſe they were to treat of Matter of great Importance, and ſuch as, being *vexata Quæſtio*, would perhaps require, upon ſome Occaſion, Reply, or one Man oftner to ſpeak, than ſitting the Houſe, Order and Cuſtom would permit,

Therefore the Court to be adjourned, and the Lords continuing together as a Committee, to take full Conſideration of the ſaid Meſſage, and what further Anſwer might be fit in due Time to ſend unto the Commons, which then [as his Lordſhip rehearſed] was in Effect that their Lordſhips would meet them of the Lower Houſe, and hear what they would deliver unto them, Time and Place in this Courſe falling next into Conſideration; his Lordſhip ſhewed, what Diſadvantage, as well to the King's Cauſe as to their Honours, the Lords ſhould admit, if altogether unprovided they ſhould meet with the Lower Houſe.

In which his Lordſhip moved, That the Lord Chief Juſtice of the *King's Bench*, the Lord Chief Juſtice of the *Common Pleas*, the Lord Chief Baron, and one Judge of every of the ſaid Courts, namely, Mr. Juſtice *Warburton*, Mr. Baron *Altham*, and Mr. Juſtice *Crooke*; who had been required, and now were preſent, to aſſiſt this Court, as Occaſion ſhould ſerve, might now be heard for the better Information and enabling of their Lordſhips, for the meeting to deliver their Opinions touching the Point of Impoſitions; being the Subject of the Treaty propoſed by the Lower Houſe, before farther Conſideration were taken of any other Anſwer to be ſent down.

Which Motion was by divers Lords approved, and by others diſallowed; and by both Sides ſpoken to and argued.

Which Difference, not being by that Courſe reconciled; but their Lordſhips remaining in Diverſity of Opinions, by general Conſent the Queſtion was by the Lords put, *viz.*

Whether the Lords the Judges ſhall be heard, to deliver their Opinions touching the Point of Impoſitions, before farther Conſideration be had of Anſwer to be returned to the Lower Houſe concerning the Meſſage lately from them received.

Whereupon the Number of the Lords requiring to hear the Judges Opinions by ſaying *Content*, exceeding the others which ſaid *Not Content*; the Lords the Judges ſo deſiring, were permitted to withdraw themſelves into the Lord Chancellor's private Rooms;

Where having remained a while, and adviſed together, they returned into the Houſe;

And having taken their Places, all ſtanding uncovered, did by the Mouth of the Lord Chief Juſtice of the *King's Bench* [Sir *Edward Coke*] humbly deſire to be forborn at this Time, and in this Place to deliver any Opinion in this Caſe, for many weighty and important Reaſons, which his Lordſhip delivered with great Gravity and Eloquence.

Concluding, That himſelf and his Brethren are upon Particulars in Judicial Courſe to ſpeak and judge between the King's Majeſty and his People;

And likewiſe between his Highneſs's Subjects, and in no caſe to be Diſputants on any Side.

The Lord Chancellor moved the Lords,

That foraſmuch as no Opinion or Direction is to had from the Judges, they would now adviſe what Anſwer ſhould be ſent to the Lower Houſe, who expect to hear from hence.

But Time not now ſerving thereunto, farther Conſideration thereof is referred unto the next Sitting of this Houſe.

The Diverſity of Opinions before mentioned, as well touching Anſwer to be returned to the Lower Houſe, as whether the Judges ſhould now deliver their Opinions concerning the Point of Impoſitions, was in Manner and Sort following, * *viz.*

The Lord *Rich* moved, to conſider what Meſſage ſhall be ſent to the Lower Houſe, becauſe they will expect an Anſwer this Day.

Lord Chancellor. I know not what Expectation the Lower Houſe hath of this Day, but your Anſwer was [at a convenient Time.] So you are tied to no Time.

But if your Lordſhips will now conſider what Anſwer at a convenient Time ſhall be ſent, That is to the Purpoſe.

The Lord *St. John.* The Committee agreed upon an Anſwer.

Now, the Time and Place is the Queſtion.

Lord Chancellor moved, That the Lords ſhould hear the Judges touching Impoſitions, before they determine either of Conference or Anſwer.

Lord *Chandois.* It is fit to hear the Commons Houſe, and to hold Correſpondence with them: For we ſhall, by refuſing them, give them Cauſe to refuſe us, and hinder all good Proceedings of this Parliament:

Therefore good to meet the Commons, and hear the Judges in their Time, which is not yet.

Lord Chamberlain. We ſhall hear the Prerogative wounded by the Commons, and be unfit to anſwer:

Therefore let us hear the Judges firſt.

Lord Chancellor. The Queſtion now is, Whether before you give Meeting or Anſwer to the Lower Houſe, you will hear the Judges.

Earl of *Southampton.* The Judges not to be heard.

Lord *Knollys.* To hear the Judges.

Earl of *Worceſter.* To hear the Judges.

* *Theſe following Debates are inſerted into the Lords Journal by Mr.* Bowyer, *then Clerk of the Houſe of Lords, out of his ſcribbled Book, as he ſaith; a Copy of which Journal, written with his own Hand, I have.*

Lord

Lord *De la Ware.* If we were to confer with the Commons, it were fit to hear the Judges: But ſeeing we are but to hear them, we may hear the Judges in good Time afterwards.

Lord *Zouch.* To hear the Judges firſt: For we ſhall wrong the King, to hear him complained on, and called to the Bar before the Judges be ready to anſwer.

Lord *Say.* I ſee not why we ſhould lay any Impoſition on the Lower Houſe, as if they would impeach the King's Prerogative, before we hear them: Neither do I hold it fit at this Time to hear the Judges.

Lord Biſhop of *Lincoln.* There may paſs ſeditious Words in handling the Matter of Impoſitions.

I would have them meet, but firſt to know upon what Point of Impoſitions; and then to hear the Judges upon that Point, will be fit.

The Six Bills were here brought from the Commons Houſe, which are hereafter mentioned; which being received, the Lords proceeded in debating the former Matters, as followeth: *viz.*

Lord *Spencer.* No Charity to think with the laſt Lord, that the Lower Houſe will wrong the King, or to preſume what they will ſay before we hear them.

Next I think, That if you hear the Judges firſt, you ſubmit yourſelves to them, who come but to aſſiſt you. Therefore I would have a Meſſage ſent down.

Lord Archbiſhop of *Canterbury.* I ſee a Diſtraction, not in Subſtance, but in Form.

It was reſolved to give the Lower Houſe meeting; but this Reſolution was had in a Committee, which the Houſe ſitting may revoke:

And it may be the ſame Reſolution may hold.

For my own part, I have not the leaſt Imagination what the Judges will ſay.

Yet I think it fit to hear them, and then determine what we will do.

Lord Biſhop of *Bathon.* In a Queſtion I will always rather ſtudy what may tend to Edification of that which is in Being, than to Deſtruction of it.

Therefore I would hear what may be ſaid *ad ædificationem*, and making good the Prerogative in this Point by the Judges.

Lord *Sheffield.* It ſeemeth to me, that the hearing of the Judges before we hear the Lower Houſe, is a Pre-occupation and a fore-judging of the Commons.

It may be, the Meaning of the Lower Houſe is to ſpeak only of the Abuſe of Officers; and therefore I would not refuſe to hear them.

Lord *Rich* offered to ſpeak; but becauſe he had ſpoken before, he might not now ſpeak again.

Lord *Knyvet.* To hear the Lower Houſe firſt, and then the Judges.

Lord Chancellor, as a Baron. The Matter is the Point of Impoſitions; *hoc eſt*, Whether the King can lay an Impoſition: Wherein I would be glad to hear the Judges, before we meet the Lower Houſe.

Touching the Judges, if they be required, they may ſpeak; if they ſee Cauſe, they may deſire to be heard:

They are not to ſit and look about them: They have no caſting Voice.

The Queſtion is, Whether the Judges ſhall be heard before any farther Proceeding; and ſuch as will hear them is to ſay *Content*, and the others *Not Content*.

Content, ſtand up bare.
Not Content, ſit ſtill covered.

Thereupon one Lord of each Side did count them:

And the *Content* did exceed the *Not Content* by Nine or Ten Voices.

The Lords which counted the Numbers were the Earls of *Pembroke* and *Southampton*.

The Judges withdrew themſelves into the Lord Chancellor's private Rooms, to confer before they ſhould ſpeak in the Houſe.

The Judges returned, and it was reſolved to hear them. They all ſtood bare.

Lord

Lord Chief Juſtice of the King's Bench *touching the Impoſitions.*

THIS is a Caſe great in itſelf, but greater in the Conſequence.

I have not conſidered, nor I think any of my Brethren, one Quarter of an Hour.

I proteſt I know not what to do, or think: We humbly thank theſe Lords that would not hear us.

And we deſire the ſame; and I hope ſhall ſhew your Lordſhips Cauſe to forbear us.

If you do confer with the Lower Houſe, I know we muſt confer with them:

For it is *Quæſtio Juris*, and *Magna Quæſtio Juris.*

The Subject claimeth, as his Birthright, to be free from all Impoſitions by Abſolute Power; that is, not by Parliament, but by the King.

The King claimeth a Power in ſome Caſe to impoſe:

So the Queſtion is between the Subjects Claim and the King's.

We are ſworn to ſerve the King, How? and his People; not *in Statu Deliberativo*, but *Judiciali*; not *de Bono*, but *de Vero.*

For the King hath no Prerogative, but what the Law giveth him.

Therefore I hope your Lordſhips look for no preſent Opinion from us:

I will neither look above me, nor about me.

We give no Judgment, but we ſay, *Quibus Lectis*, &c.

The Houſe of Commons have ripe young Men, learned: They have had View of Records, and long Time to deliberate.

I and my Brethren never ſaw any Record.

Therefore, my Lords, do you look for a preſent Opinion?

In the Book of *Judges*, God ſaith to Judges, *Ad Pœnitentiam properat, qui cito judicat.*

Again, No general is put to Judges, as, Whether the King can impoſe: But it is, *Nativum*, that is, to be tranſported; or, *Exoticum Mercimonium.*

Another Reaſon we offered to your Lordſhips, *viz.* Shall we confer, and not hear on the King's Side? That is not equal.

Here is none of the King's learned Council, who ought to be all here.

They are miſplaced there:

They have Writs to be here:

They ought to argue:

Judges are no Diſputants:

We are to give your Lordſhips Counſel.

Our Writ is, *Ad tractandum Nobiſcum & cum Proceribus, &c.*

When you aſk me a Queſtion, I will anſwer; but if the Lower Houſe aſk me, I will not anſwer.

If you appoint a Meeting, and hear what the Commons will ſay, you will likewiſe hear it anſwered; which we that are Judges may not do: We are to judge, not to diſpute.

The Extent of this Matter is large, all the Time of Queen *Elizabeth* and the King.

This Queſtion is not uſual; it never came before me in *Weſtminſter-Hall.*

The Subject hath this Remedy, either by Bill in Parliament; and the Commons muſt diſpute, and your Lordſhip with them: or by, *&c.*

He that ſhall reſtrain the Prerogative narrower than Right, tendeth to Popularity.

To extend it farther than is Law, in Judges is Perjury, in others is baſe Flattery.

But, not long after this, *viz.*

Die Lunæ 6 die Junii,

The Lord Chancellor, after a general and long Silence in the Houſe, in a very grave and worthy Speech, gave unto the Lords great Thanks, that they had ſo nobly born with him in many Motions, which (as he ſpake) he had unſeaſonably made unto them; and craved Leave to move unto them a Matter, which (as he ſaid) himſelf ſcarce underſtood.

He then did put their Lordſhips in mind, That the King, for weighty and important Occaſions, did call a Parliament to begin the fifth Day of *April* laſt:

And farther declared unto them, That his Majeſty's Pleaſure then was, to diſſolve the ſame:

And for that Purpoſe, by his Highneſs's Commandment, a Commiſſion was then ſent forth, under the Great Seal, which was that Day to be executed.

The Order and Form thereof his Lordſhip likewiſe remembered to be thus: *viz.*

That the Lords having firſt put on their Robes, do ſend for the Speaker and Commons to hear the King's Pleaſure.

He then moved them, to ſend a Meſſage to the Lower Houſe; the Effect whereof he alſo propoſed; which all the Lords allowing, was ſent accordingly.

Meſſage

Meſſage ſent to the Lower Houſe, by
Mr. Doctor *Bird*, and
Mr. Doctor *James*: viz.

That the Lords having underſtood of a Commiſſion under the Great Seal of *England*, for diſſolving, as this Day, of the Parliament, which was begun on the ſixth of *April* laſt;

Foraſmuch as they ought to have heard this Morning ſomething from that Houſe, have hitherto ſtayed the publiſhing of the ſaid Commiſſion, and do now expect to know whether their Lordſhips ſhall hear any thing from them, or not otherwiſe, the Lords Commiſſioners muſt this Day diſſolve the Parliament.

ANSWER.

That they will take into Conſideration the Meſſage which the Lords have ſent; and preſently ſend Anſwer by Meſſengers of their own.

Second Anſwer from the Lower Houſe, by
Sir *George Moore* and others: *viz.*

That they received a Meſſage from the Lords, ſignifying that there is a Commiſſion forth unto certain ſelect Lords, to diſſolve the Parliament this Day:

And that the Lords have hitherto made Stay of publiſhing the ſame, expecting to hear ſomewhat from that Houſe, *&c. ut ſupra.*

In anſwer whereunto, they do let their Lordſhips underſtand, That this Morning they received a Letter directed to their Speaker, from the King's Highneſs, whereby was ſignified,

That whereas his Majeſty by former Letters had declared his Determination to diſſolve the Parliament on *Thurſday* next;

In the mean time that whole Houſe ſhould proceed to that important Buſineſs, for which the ſame was eſpecially called:

Yet now his Majeſty's Pleaſure to be, to diſſolve the Parliament to-morrow, being the ſeventh of this Month, unleſs they ſhall before that Time perform what by his ſaid former Letters was required.

Laſtly, That they have entered into Conſideration of that great Matter.

Anſwer returned to the Lower Houſe, by Meſſengers of their own, viz.

That the Lords have heard their Anſwer, and will take it into Conſideration.

The

The Lords Commiſſioners named in the Commiſſion aboveſaid, by Order of the Lords, withdrew themſelves, to adviſe what in this Caſe were fit by them to be done:

And being returned into the Houſe, by the general Conſent of them, and all the Lords then preſent,

Anſwer was ſent by the Lower Houſe, by
Mr. Doctor *Bird*, and
Mr. Doctor *James*:

That the Lords having conſidered of the Anſwer which that Houſe ſent to their Lordſhips, have reſolved to adjourn this Court until two of the Clock to-morrow in the Afternoon, which will be the ſeventh of this Month.

At which Time that Parliament was diſſolved, by virtue of the ſaid Commiſſion.

Now becauſe the Caſe of Impoſitions was agreed by all the Judges in the Houſe of Lords to be *Quæſtio Juris*, and *Magna Quæſtio Juris*; the Subject claiming as his Birthright to be free from all Impoſitions by Abſolute Power; that is to ſay, by the King's, without the common Conſent of the Parliament: And becauſe the Report of *Bates*'s Caſe is printed, wherein the Barons of the *Exchequer* gave Judgment for the King:

I have thought it a juſt Duty to Truth, here to give at length the learned Argument of an excellent and no leſs worthy Author, who was afterwards preferred to be a Judge of this Kingdom, touching the Point of Impoſitions.

The ARGUMENT.

The Queſtion is, *Whether the King, without Aſſent of Parliament, may ſet Impoſitions on the Wares and Goods of Merchandizes exported out of and into this Realm.*

THREE Things have been debated in this Parliament, that have much concerned the Right of our whole Nation:

Of which every one of them have exceeded the other, by a Gradation in Weight and Moment.

The

The *Firſt* was the Change of our Name, which was a Point of Honour, wherein we ſhewed ourſelves not willing to leave that Name,

By which our Anceſtors made our Nation famous.

Yet have we loſt it, ſaving only in thoſe Caſes where our ancient and faithful Protector, the Common Law, doth retain it.

The *Second*, was the Union; a Queſtion of greater Moment: For that concerned the Freehold of our whole Nation:

Not in ſo high a Point, as having or not having;

But in Point of Diviſion and Participation; that is, Whether we ſhould enjoy the Benefits and Liberties of the Kingdom, Ourſelves only, as we and our Anceſtors have done, or admit our Neighbour Nation to have equal Right in them; and ſo make our own Part the leſs, by how much the greater Number ſhould be, among whom the Diviſion was to be made.

This was adjudged againſt, as both legal and ſolemnly.

And therefore in that we do reſt, hoping of that Effect in this Judgment, which we read of in the Poet, Co. *lib.* 7. Calvin's *Caſe.*

Tros Tyriuſque mihi nullo diſcrimine habetur. Virg. Æneid. *lib.* 1. Dido's *Speech to* Æneas.

The *Third* is the Queſtion now in hand, which exceedeth the other two in Importance and Conſequence, concerning the whole Kingdom.

For it is a Queſtion of our very Eſſence; not what we ſhall be called, nor how we ſhall divide that we have; but whether we ſhall have any thing or nothing.

For if there be a Right in the King to alter the Property of that which is our's without our Conſents, we are but Tenants at his Will of that which we have.

If it be in the King and Parliament, then have we Property, and are Tenants of our own Will:

For that which is done in Parliament, is done by all our Wills and Conſents.

And this is the very State of the Queſtion which is propoſed, Whether the King may impoſe without Conſent of Parliament?

Impoſitions are of two Sorts, *Foreign* and *Inteſtine:*

Inteſtine, by thoſe which are raiſed within our Land, in the Comerce and Dealing that is at home within ourſelves, and may as well for that Reaſon be ſo called, as for that *veſcantur inteſtinis Reipublicæ*, they are fed and nouriſhed with the conſuming and waſting of the Intrails of the Common-wealth.

Againſt theſe I need not to ſpeak;

For the King's learned Council have with great Honour and Conſcience, in full Council acknowledged them to be againſt the Law.

Therefore I will apply myſelf to ſpeak of Impoſitions *Foreign*, being the ſingle Queſtion now in hand, and maintained on the King's Behalf with great Art and Eloquence.

The Inconvenience of thoſe Impoſitions to the Common-wealth; that is, how hurtful they are to the Merchants, in impoveriſhing them in their Eſtates; to the King, in the decreaſing of his Revenues by Decay of Traffick; and to the whole People, in making all Commodities exceſſive dear, is confeſſed by all:

And therefore need no Debate.

The Point of Right is now only in Queſtion; and of that I will ſpeak with Conſcience and Integrity, rather deſirous that the Truth may be known, and Right be done, than that Opinion of myſelf or any other may prevail.

The Occaſion of this Queſtion was given by the Book of Rates lately ſet out, affronted with the Copy of Letters Patents dated *July* 28, 6 *Jacobi*.

In which Book, beſides the Rates, is ſet down upon every Kind of Merchandize exported and imported, for the true anſwering of Subſidy to the King, according to the Statute of Tonnage and Poundage.

In the firſt Year of his Reign, there is an Addition of Impoſitions upon all thoſe Kind of Wares, which within the Book are expreſſed; and the Rate of the Impoſition as high, and in ſome Caſes higher than the State of the Subſidy: And this declared to be by Authority of thoſe Letters Patents.

Hereupon conſidering with myſelf, That heretofore the ſetting on of one only Impoſition, without Aſſent of Parliament, upon ſome one Kind of Merchandize, and that for a ſmall Time, and upon urgent Neceſſity of actual War, did ſo affect our whole Nation, and eſpecially the great Court of the Parliament, being the repreſentative Body of the whole Common-wealth, that neither the Sun did ſhine, nor the Rivers run their Courſes, until it was taken off by the whole Judgment of the State.

I thought it concerned me, and other Members of that Council, that were no leſs truſted for our Countries than thoſe in former Times, and have their Actions to guide and direct us, to have the ſame Care they had in preſerving the Rights and Liberties of the People, having now more Cauſe than they had: For that the Impoſitions, now ſet on without Aſſent of Parliament, are not upon one or two ſpecial Kinds of Goods, but almoſt indefinite upon all; and do extend to the

the Number of many Hundreds, as appeareth by that printed Book of Rates, and are ſet in Charge upon the whole Kingdom, as an Inheritance, to continue to the King, his Heirs and Succeſſors, for ever.

Which Limitation of Eſtate in Matters of Impoſitions was never heard of nor read of before, as I conceive.

The Inducements expreſſed in theſe Letters Patents, are much upon Point of State, and with reference to the Rights and Practice of Foreign Princes.

For this I will not take upon me to enter into the Conſideration of ſuch great Myſteries of Policy and Government:

But only will put you in mind of that I obſerve out of *Titus Livius* the *Roman* Hiſtoriographer: *Omnem divini humanique moris memoriam abolemus, cum nova peregrinaque patriis & priſcis præferimus.* Tit. Liv. *lib.* 8.

To that which hath been ſpoken for the King's Prerogative, I will give Anſwer to ſo much of it as I may conveniently in my Paſſage through this Debate:

Wherein I will principally endeavour to give Satisfaction to ſuch new Objections as were made by the worthy and learned Counſellor of the King that ſpake laſt in Maintenance of his Majeſty's Prerogative.

The Caſe in Terms is this:

The King, by his Letters Patents before recited, hath ordained, willed and required, that theſe new Impoſitions contained in that Book of Rates, ſhall be for ever hereafter paid unto him, his Heirs and Succeſſors, upon Pain of Diſpleaſure.

Hereupon the Queſtion ariſeth, Whether by this Edict and Ordinance ſo made by the King himſelf by his Letters Patents, of his own Will and Power abſolute, without Aſſent of Parliament, he be ſo lawfully intitled to that he doth impoſe, as that thereby he doth alter the Property of his Subjects Goods, and is enabled to recover theſe Impoſitions by Courſe of Law.

I think he cannot; and I ground my Opinion upon theſe four Reaſons:

I. It is againſt the natural Frame and Conſtitution of the Policy of this Kingdom, which is *Jus Publicum Regni*, and ſo ſubverteth the Fundamental Law of the Realm, and induceth a new Form of State and Government.

II. It is againſt the Municipal Law of the Land, which is, *Jus Privatum*, the Law of Property and of private Right.

III. It

III. It is againſt divers Statutes made to reſtrain our King in this Point.

IV. It is againſt the Practice and Action of our Common-wealth *contra morem Majorum*; And this is the modeſteſt Rule to limit both King's Prerogatives and Subjects Liberties.

Upon the *Firſt* and *Fourth* of thoſe principal Grounds I will more inſiſt than upon the *Second* and *Third*, both for that they in their own Nature are a more proper Matter for a Council of State; to the Judgment of which I apply my Diſcourſe (and they have not been enforced by others); as alſo for that the other two (as more fit for a Bar and the Courts of ordinary Juſtice), have by ſome Profeſſors of the Law been already moſt learnedly and exquiſitely diſcuſſed.

For the *Firſt*, it will be admitted for a Rule and Ground of State, that in every Common-wealth and Government, there be ſome Rights of Sovereignty, *Jura Majeſtatis*, which regularly and of common Right belong to the Sovereign Power of that State, unleſs Cuſtom, or the proviſional Ordinance of that State do otherwiſe diſpoſe of them: Which Sovereign Power is *Poteſtas Suprema*, a Power that can controul all other Powers, and cannot be controuled but by itſelf.

It will not be denied, that the Power of impoſing hath ſo great a Truſt in it, by reaſon of the Miſchiefs may grow to the Common-wealth by the Abuſes of it, that it hath ever been ranked among thoſe Rights of Sovereign Power.

Then is there no farther Queſtion to be made, but to examine where the Sovereign Power is in this Kingdom: For there is the Right of Impoſitions.

The Sovereign Power is agreed to be in the King.

But in the King is a Two-fold Power:

The one in Parliament, as he is aſſiſted with the Conſent of the whole State:

The other out of Parliament, as he is ſole and ſingular, guided merely by his own Will.

And of theſe two Powers in the King, one is greater than the other, and can direct and controul the other, That is *Suprema Poteſtas*, the Sovereign Power; and the other is *Subordinata*.

It will then be eaſily proved, That the Power of the King in Parliament is greater than the Power out of Parliament, and doth rule and controul it.

For if the King make a Grant out of Parliament, it bindeth him and his Succeſſors; he cannot revoke it, nor any of his Succeſſors: But by his Power in Parliament he may defeat and avoid it; and therefore that is the greater Power.

If

If a Judgment be given in the *King's Bench*, by the King himſelf (as may be, and by the Law is intended,) a Writ of Error to reverſe this Judgment may be ſued before the King in Parliament, which Writ muſt be granted by the Chancellor, upon Bill endorſed by the King himſelf, as the Book is 1 *Henry* VII.

And the Form of the Writ of Error is, that it being directed to the Chief Juſtice of the *King's Bench*, *Quia in Recordo & Proceſſu, ac etiam in redditione Judicii Loquelæ, quæ fuit in curia noſtra coram nobis, error intervenit manifeſtus ad grave damnum, &c. Nos errorem (ſi quis fuerit) modo debito corrigi, & partibus prædictis plenam & celerem Juſticiam fieri volentes in hac parte, vobis mandamus quod Recordum & Proceſſum Loquelæ illius cum omnibus ea tangentibus in præſens Parliamentum noſtrum ſub Sigillo tuo diſtincte & aperte mittas. Et hoc breve, ut inſpectis, &c. Nos de conſilio & adviſamento Dominorum Spiritualium & Temporalium ac Communitatis in Parliamento noſtro prædicto exiſtentis ulterius pro errore illo corrigendo fieri faciamus, quod de Jure & ſecundum Legem & Conſuetudinem Regni noſtri Angliæ fuerit faciendum.* Lib. Intrad. fol. 303. c. 1.

So you ſee the Appeal is from the King out of Parliament, to the King in Parliament.

The Writ is in his Name.

The rectifying and correcting the Error is by him, but with the Aſſent of the Lords and Commons, than which there can be no ſtronger Evidence to prove that his Power out of Parliament is ſubordinate to his Power in Parliament. *The Book is not ſo that the Commons ſhould meddle.*

For in Acts of Parliament, be they Laws, Grounds, or whatſoever elſe, the Act and Power is the King's; but with the Aſſent of the Lords and Commons, which maketh it the moſt Sovereign and Supreme Power above all, and controulable by none; beſide this Right of impoſing, there be other in the Kingdom of the ſame Nature:

As the Power to make Laws;

The Power of Naturalization;

The Power of erection of Arbitrary Government;

The Power to judge without Appeal;

The Power to legitimate.

All which doth belong to the King only in Parliament.

Others there be of the ſame Nature, that the King may exerciſe out of Parliament, which Right is grown unto him in them more than thoſe others, by the Uſe and Practice of the Common-wealth; as Denization, Coynage, making War.

Which Power the King hath, Time out of Mind, practiſed, without the gainſaying and murmuring of the Subjects.

But theſe other Powers beforementioned have ever been executed by him in Parliament, and not otherwiſe, but with the Reluctation of the Whole Kingdom.

Can any Man give me a Reaſon why the King can only in Parliament make Laws?

No Man ever read any Law whereby it was ſo ordained, and yet no Man ever read that any King practiſed the contrary.

Therefore it is the original Right of the Kingdom, and the very natural Conſtitution of our State and Policy, being one of the higheſt Rights of Sovereign Power.

So it is in Naturalization, Legitimation, and the reſt of that Sort before recited.

It hath been alledged, that thoſe which in this Cauſe have enforced their Reaſons from this Maxim of ours (that the King cannot alter the Law) have diverted from the Queſtion.

I ſay, under Favour, they have not; for that in Effect is the very Queſtion now in Hand, for if he alone out of Parliament may impoſe, he altereth the Law of *England* in one of theſe two fundamental Points:

He muſt either take his Subjects Goods from them without Aſſent of the Party, which is againſt the Law; or elſe he muſt give his own Letters Patents the Force of a Law to alter the Property of his Subjects Goods, which is alſo againſt the Law.

That the King of *England* cannot take his Subjects Goods without their Conſent, it need not be proved more than a Principle.

It is *jus indigena*, an old home-born Right, declared to be Law by divers Statutes of the Realm;

As in 34 *Edward* III, *cap.* 2, That no Officer of the King's, or of his Heirs, ſhall take any Goods of any manner of Perſon, without the Aſſent and Good-will of the Party to whom the Goods belonged.

The ſame is declared in many other Statutes made againſt Preſages and Purveyances.

Commiſſions, Loans, or Privy Seals, Benevolence.

Neither have any Kings attempted to go plainly and directly againſt that Right, but have deviſed certain legal Colours and Shadows for their wrongful doing in that Kind, which I find were of three Sorts; by way of Commiſſion, by way of Benevolence, by way of Loan:

Commiſſions of all other were the moſt inſolent, for they went out as it were by Authority, to levy Aids of the People upon great Neceſſity of the Common-wealth.

Theſe were condemned in Parliament 21 *Edward* III, *Numb.* 16, upon a grievous Complaint made of the Uſe of them by the Commons unto the King in Parliament, wherein the People do pray the King that he would be pleaſed to remember how at the Parliament held the 17th Year of his Reign, and at the laſt Parliament, it was then accorded

and granted by their ſaid Lord the King and his Council, that there ſhould go out no Commiſſion out of the *Chancery* for Hobblers, Archers, and other Charges to be levyed upon the People, if they were not granted in Parliament, which Ordinances were not obſerved; *That is the Parliament.*

By Reaſon whereof the People were impoveriſhed and decayed, for which they prayed the King that he would be pleaſed to take Pity of his People,

And the Ordinances and Grants made to his People in Parliament to affirm and hold.

And that if ſuch Commiſſions go without Aſſent of Parliament, that the Commons which are grieved thereby may have Writs of *Superſedeas*, according to the ſaid Ordinance,

And that the People be not bound to obey them.

To this the King's Anſwer is,

Si un tiel Impoſition ſoit fait par grande neceſſite, & ceo del Aſſent des Preletz, Counts, Barons, & autre Grandes, & autre Homes des Communs, adonque preſentz, neantmoins noſtre Seigneur le Roy, que voet que tiel Impoſition non duemont ſoit fait treit en conſequence eins voet que les Ordinances d'ont c'eſt petition fait mencion, ſoit bienment gardez.

The laſt Time that ever King attempted that Exaction was 17 *Henry* VIII, upon taking the *French* King at *Pavia*, by the Forces of *Charles V.* Stow's Annals, 17 Hen. VIII.

Cardinal *Woolſey* having a Purpoſe to put the King into a War about that Quarrel, and finding his Coffers empty adviſed this Way, to ſend out Commiſſions, and by them to levy Aid of the People, according to the Value of their Eſtate.

But that gave ſuch Diſcontent to the whole Realm, that it cauſed in many Places an actual Rebellion; and the Cardinal being called to give an Account of this bad Advice, did juſtify this Fact by Example of *Joſeph*, who adviſed *Pharoah* to take the fifth Part of his Subjects Goods:

But when he ſaw that would not ſerve the turn, he falſely laid it upon the Judges, informing the King he did it by their Advice, being reſolved by them of the Lawfulneſs of the Fact.

So that you ſee that great Churchman found more Safety in Matter of Government of our Common-wealth, in making a falſe Report of a Point of the Common Law, than in a true Text of the Scripture.

And if any Churchmen will endeavour by Application of the Text of Scripture to overthrow the ancient Laws and Liberties of the Kingdom,

I would

I would adviſe them to be admoniſhed by the ill Succeſs of the Cardinal in this particular Action, and by the miſerable Cataſtrophe of his whole Life and Fortunes.

Loans and Privy Seals.

Loans and Appreſts were thoſe which we call Privy Seals; which though they were more moderate in ſhew, yet, being made againſt the Good-will of the Parties, were as injurious indeed as the other.

Rot. Parl. 25 Edw. III. N°. 16.

The Commons in Parliament, 25 *Edward* III, *Numb.* 16, made a grievous Complaint to the King againſt the Uſe of them, and prayed that none from thenceforth ſhould be compelled to make Loans againſt their Will, and they gave this Reaſon in their Petition:

For that it is againſt Reaſon, and the Franchiſe of the Land, and prayed that Reſtitution might be made to thoſe that have made ſuch Loans.

To this the King's Recript was:

"It pleaſeth our Lord the King it be ſo."

Benevolences.

Laſtly, Came in theſe kind of Exactions, which were termed by the fair Name of Benevolences, but they became ſo odious, as they gave the Occaſion of a good Law to be made againſt themſelves, and againſt all other Shifts and Devices, by what new Terms ſoever impoſed upon the Subjects:

The Law is 1 *Richard* III, *cap.* 2, and is thus:

The King remembring how the Commons of this his Realm, by new and unlawful Inventions, and inordinate Covetiſe againſt the Law of this Realm, have been put to great Servitude, and important Charges and Exactions, and eſpecially by a new Impoſition called a Benevolence, enacteth by the Advice, *&c.*

That the Subjects and Commons of this Land, from henceforth, ſhall in no wiſe be charged by any ſuch Charges or Impoſitions called a Benevolence, nor by any ſuch like Thing.

But if you will deny that the King doth in this Caſe take the Goods of his Subjects without his Aſſent, then you muſt fall upon mine other alternative Propoſition:

That the King's Patent hath in this Caſe the Power of a Law to alter Property.

For how can he recover the impoſed by a legal Courſe of proceeding, and by Judgment in this Court; but upon a Title precedent him, before the Action brought, which Title muſt be a Property in the ſame impoſed?

And how cometh he by that Property, but by his own Letters Patents, by which he declareth he will have that ſame as an Impoſition?

For the Judgment giveth not the Right, but only doth manifeſt and declare it, and giveth execution of it.

So in this Point the Queſtion is, whether the King's Patent hath the Force and Power of the Law, or not.

For if it be not maintained that it hath, it can never be concluded that he can transfer the Property of his Subjects Goods to himſelf, without the Aſſent of them.

For, *quod meum eſt, ſine facto meo alterius fieri non poteſt.*

And if you give this Power to the King's Patent, you ſubject the Law, and take away all Rules and Bounds of ſettled Government, and leave in the Subject no Property of his own:

Neither do you by this advance the King's Power and Prerogative, but you make him no King.

For, as *Bracton* ſaith, Bracton, lib. 1, 2. cap. 8.

Rex eſt ubi dominatur Lex, non Voluntas.

So that we ſee the Power of impoſing and Power of making Laws are *convertitia* and *coincidentia*; and whoſoever can do the one, can do the other.

And this was the Opinion of Sir *John Forteſcue*, that Reverend and Honourable Judge, a learned Profeſſor of the Common Law, and Chief Juſtice of the *King's Bench*, in the Time of *Henry* VI.

His Words are theſe, in his Book *De Laudibus Legum Angliæ*, *cap.* 9. *Non poteſt Rex Angliæ ad libitum Leges mutare Regni ſui, Principatu namque nedum regali, ſed & politico ipſe dominatur. Si Regali tantum præeſſet, iis Leges mutare poſſet, tallagia quoque, & cætera onera imponere, ipſis inconſultis; quale dominium Leges civiles indicant, cum dicunt, quod Principi placuerit, Legis habet vigorem; ſed longe aliter poteſt Rex politicis imperans, quia nec Leges ipſe ſine ſubditorum aſſenſu mutare poterit, nec ſubjectum populum renitentem onerare peregrinis impoſitionibus.* Forteſcue de Laudibus Leg. Angliæ, cap. 9.

In which Place I muſt interpret unto you, that *peregrinæ impoſitiones* be not ſtrange and unheard of Impoſitions, as was urged by the worthy Gentleman that laſt ſpake:

But Impoſitions upon Traffick into and out of foreign Countries, which is the very Thing in queſtion.

Further in the 36th *Chapter* he ſaith of the King of *England*, *Neque Rex ibidem per ſe aut miniſtros ſuos, tallagia, ſubſidia, aut alia quævis onera imponit Ligeis ſuis, aut leges eorum mutat, vel novas condit, ſine conceſſione vel aſſenſu totius Regni ſui in Parliamento.* *Ibid.* cap. 36.

So he maketh thoſe two Powers of making Law, and oppoſing, to be concomitant in the ſame Hand:

And that the one of them is not without the other.

He giveth the ſame Reaſons for this as we do now, but in other Words, becauſe (as he ſaith) in *England* it is *Principatus mixtus & politicus.*

The King hath his Sovereign Power in Parliament aſſiſted and ſtrengthened with the Conſent of the whole Kingdom.

And therefore theſe Powers are to be exerciſed by him only in Parliaments.

In other Countries they admit the Ground of the Civil Law, *quod Principi placuerit, legis habet vigorem*;

Becauſe they have an abſolute Power to make Law.

They have a Power to impoſe, which hath the Force of a Law in transferring Property.

Ph. Comines, lib. 4. cap. 1. lib. 5. cap. 8.

Philip Comines, that lived in that Time, in his fourth Book, the firſt Chapter, and the fifth Book, the eighth Chapter, taketh notice of this Policy of *England*, and commends it above all other States, as ſettled in moſt Security.

And further to our Purpoſe layeth this Ground, that a King cannot take one Penny from his Subjects without their Conſent, but it is Violence; and you may there note the Miſchiefs that grew to the Kingdom of *France* by the voluntary Impoſition firſt brought in by *Charles* VII, and ever ſince continued, and increaſed to the utter Impoveriſhment of the common People, and the Loſs of their free Council of the Three Eſtates:

And if this Power of impoſing were quietly ſettled in our Kings, conſidering what is the greateſt Uſe they make of aſſembling of Parliaments, which is the Supply of Money, I do not ſee any Likelyhood to hope for often Meetings in that Kind, becauſe they would provide themſelves by that other Means.

And thus much for my firſt Reaſon, grounded upon the natural Conſtitution of the Policy of our Kingdom, and the publick Right of our Nation.

Common Law.

Secondly, For the Point of Common Law, which is my ſecond Reaſon, it hath been well debated, and nothing left unſpoken that can be ſaid in it, and therefore I will decline to ſpeak of that which other Men have well diſcuſſed:

And the rather for that there is nothing in our Law Books directly and in point of this Matter:

Neither is the Word *Impoſition* found in them, until the Caſe of my Lord *Dyer*, 1 *Eliz.* 1605. For we ſhall find this Buſineſs of an higher Strain, and always handled elſewhere, as afterwards ſhall appear.

Yet I will offer ſome Anſwers to ſuch Objections as have been made on the contrary in Point of Common Law, and have not been much ſtood upon by others to be anſwered.

The Objections that have been made are theſe:

That from the firſt Book of the Law to the laſt, no Man ever read any thing againſt the King's Power of impoſing:

No Judgment was ever given againſt it in any of the King's Courts at *Weſtminſter*:

Other Points of Prerogative, as high as this, diſputed and debated, his Exceſs in them limited, as in the Book of 42 *Aſſ. Pl.* 5. where the Judges took away a Commiſſion from one that had Power given by it to him under the Great Seal, to take one's Perſon, and to ſeize his Goods before he was indicted. 42 Aſſ. Pl. 5.

So Mr. *Scrogg*'s Caſe, 1 and 2 *Eliz. Dier* 175, the Power of the King in making a Commiſſion to determine a Queſtion of Right depending between two Perſons notably debated and ruled againſt the King, that he could not grant it. 1 & 2 Eliz. Dier 175.

To this I anſwer,

That Cauſes of this Nature (of which the Queſtion now handled is) have ever been taken to be of that extraordinary Conſequence in Point of the common Right of the whole Kingdom, that the State would never truſt any of the Courts of ordinary Juſtice with the deciding of them:

But aſſumed the Cogniſance of them into the High Court of Parliament, as the fitteſt Place to decide Matters ſo much concerning the whole Body of the Kingdom, as 2 *Edw.* III. 7.

It appears that *Edward* I. had granted a Charter to the Men of *Great Yarmouth*, That all the Ships of Merchants coming to the Port of *Yarmouth*, ſhould land their Goods at their Haven, and not at any other Haven at that Port, as at *Garneſton* and *Little Yarmouth*, which were Members of that Port.

This was very inconvenient for the Merchants, and a great Hurt to Traffick; and therefore the Charter was queſtioned in the Time of *Edward* II, and adjudged good by the Council.

But the Parties not contented with this Judgment in the 2d Year of King *Edward* III, by another in Parliament made upon a Petition there exhibited againſt this Grant, brought a *Scire Facias* out of the *Chancery*, returnable in the *King's Bench*, to queſtion again the lawfulneſs of the Patent, and in that Suit the Cauſe was notably debated, and thoſe Reaſons much inſiſted upon that have been enforced in this Caſe:

As that of the King's Power in the Cuſtody of the Ports.

But the Matter ſo depending in the ordinary Court of Juſtice, a Writ came out of the Parliament, and did adjourn it thither again, where it gave Occaſion of a good Law to be made to prevent the like Grants, and to make them void, notwithſtanding any Judgment given upon them,

them, and to make ſuch Judgments alſo void, the Statute is 9 *Edw.* III, *cap.* 1.

9. Edw. III, cap. 1. Alien *and* Denizen *may carry his Merchandize where it pleaſeth him, notwithſtanding any Charter granted, or Judgment thereupon.*

And in the Parliament *Rolls*, 2 *Henry* IV, N°. 109, we find a notable Record which gives Warrant for the Proceeding in Parliament in this Manner, as hath been in this Caſe, notwithſtanding the Judgment in the *Exchequer*, and declares to the Kingdom, That notwithſtanding the great Clamour made by ſome Men, nothing hath been done in this Buſineſs by thoſe that ſerve in the Parliament, but in Imitation of their worthy Predeceſſors in the very like Caſe.

In the ſecond Year of King *Henry* IV. the Commons ſhew, That in the Time of *Richard* II, by the means of *John Waltham*, Biſhop of *Saliſbury*, then Treaſurer of *England*, wrongfully, without Authority of Parliament, and by Reaſon of a Judgment given in the *Exchequer* 16 and 17 *Richard* II, by the Barons there, againſt certain Merchants of *Briſtol*, and other Places, Priſage had been taken for Wines, otherwiſe than in ancient Times had been; and therefore they prayed they might pay their Prize Wines in the manner they had uſed to pay, notwithſtanding any Judgment given in the *Exchequer* contrary to the ancient Uſage:

Which Petition the King granted, and the Judgment thereupon became void, and the priſage Wine hath been paid, contrary to the Judgment ever ſince.

1 Eliz. Dier 165.

In 1 *Eliz. Dier* 165, upon the Complaint made by the Merchants of the Impoſitions ſet upon Cloth by Queen *Mary*, by her abſolute Power, without Aſſent of Parliament,

The Cauſe was thought to be too weighty to be decided in any one Court:

But (as it appeareth in the Book) it was referred to all the Judges of *England*, who divers Times had Conference about it:

So it may well be, there is nothing againſt it in our *Year Books*, for there is nothing of it.

Another Objection was this, which was made in the laſt Argument, *viz.* That Cuſtom is originally due by the Common Law of *England*: It can then have no other Ground or Cauſe, but merely the King's Royal Prerogative, as a Right and Duty originally belonging to his Crown:

Which if it be, it muſt neceſſarily follow he may impoſe, for that is but the exerciſing of that Right;

To prove this was alledged the Caſe 39 *Edward* III, 13, by which Caſe it appeared that King *John* had a Cuſtom of Eight Pence on a Ton of Wine in the Port of *Southampton*.

ANSWER.

But the Book doth not tell you, that the King had it by Prerogative: And he might have it otherwiſe as well, as by Preſcription, or Convention; which ſhould the rather be intended by reaſon of the Certainty of the Sum paid.

For if it were by Prerogative, he might take ſometimes more, ſometimes leſs at his Will, the Right being indefinite, and the Quantity limited only by his own Diſcretion.

A common Perſon may have ſuch a Cuſtom certain, as 18 *Eliz.* *Dyer* 352. The Mayor of *London* hath the twentieth Part of Salt brought into the City by Aliens, which is a great Impoſition, but is good by Preſcription originally, and hath received greater Strength ſince by Acts of Parliament made for the Confirmation of the Liberties and Cuſtoms of the City of *London.* 18 Eliz. Dyer 152.

So it appeareth, that *John of Britain* had Cuſtom of the Ships that arrived at his Port of *Little Yarmouth*, worth Twenty Pounds *per Annum.* Dyer 43.

And theſe Inſtances do infer, that a Cuſtom may be otherwiſe than by Prerogative.

And therefore it is no good Argument to conclude, The King had ſuch a Cuſtom, therefore he had it by Prerogative.

The Book in 30 *Hen.* VIII. *Dyer* 43. was much preſſed on this Point, which ſayeth, That Cuſtom belongeth unto the King at Common Law; and doth inſtance in Wools, Wool-fells, and Leather, begun at the Common Law, but abridged by the Statute 14 *Edw.* III. *cap.* 21, *Stat.* 1. But this appeareth to be a great Error and miſtaking in the Book. 30 Hen. VIII. Dyer 43. 14 Edw. III. cap. 21. Stat. 1.

For we do find, that that Cuſtom of Wools, Wool-fells and Leather, was begun by a Grant in Parliament, as appeareth in the Statute 15 *Edw.* I. *cap.* 7. The Words be, *Granted to us by the Commonalty aforeſaid*; and the laſt mention before was, *That the King had granted to the Biſhops, Earls, Barons, and all the Commonalty of the Land*, &c. *Novem.* 3. *Edw.* I. the King recited in his Letters Patents, that *Prælati, Magnates, ac tota Communitas Mercatorum Regni*, granted this new Cuſtom.

And ſo the Ground and Motive of that Opinion being falſe, all grounded upon that muſt needs be erroneous.

It was objected, that the King holdeth at this Day the Increaſe of four Pence in the Pound over due Cuſtom paid by Merchants Aliens, according to the Purport of *Carta Mercatoria*, 31 *Edw.* I. by mere Right of Prerogative at the Common Law. Rot. Char. 31 Edw. I. N°44. in Turri London.

For by that Grant of the Merchants he cannot hold it, they being no Body Politick at the Time of the Grant.

And therefore the Grant is merely void, to bind in Succeſſion: And yet the Merchants Aliens do pay it at this Day.

ANSWER.

It is agreed by the Common Law, that a Contract with a Number not incorporate, bindeth not Succeſſion.

But we muſt take notice, that they by whom the Grant was made of the Augmentation of Cuſtom by Three Pence in the Pound, and other Increaſes 31 *Edw.* I. were Merchants Aliens, who by the Law of Merchants and Nations may contract to bind their Succeſſors in Matters of Traffick.

For their Contracts are not ruled by the Common Law of the Land, but by the Law of Nations, *Et per Legem Mercatoriam*, as the Book Caſe is 13 *Edw.* IV. 10.

And there was a good Conſideration given them by the King, for this Increaſe of Cuſtom;

As Diſcharge of Prize Wines for Two Shillings the Ton, and other Immunities which all Merchants Aliens hold and enjoy at this Day by Force of that Contract made 31 *Edw.* I.

For a Stranger payeth now but Two Shillings the Ton for Priſage, whereas it ſtandeth an *Engliſhman* in much more.

So, as the Rule of commutative Juſtice maketh the Contract available to the King againſt the Merchants, becauſe he parteth with Part of his Priſage to the Merchant, and maketh it available to the Merchant againſt the King, becauſe he giveth him Increaſe of Cuſtom above that is due by Law.

27 Edw. III. cap. 26.

But the Statute of 27 *Edw.* III. *cap.* 26. heretofore cited, doth make this Point clear without Scruple, which confirmeth the Charter 31 *Edw.* I. entirely; and by that the Increaſe of Cuſtom by Three Pence in the Pound, which is by Name mentioned in the Statute, is now due by Act of Parliament.

If you will have the King hold this Increaſe of Cuſtom by Prerogative, you go directly againſt his Meaning: For it appeareth by that which preſently followed this Grant, that the King took this Increaſe of Cuſtom by way of Contract only, and not by Prerogative:

For the ſame Year following, he directeth his Writs to the Officers of his Ports, reciting the Contract made with the Aliens by *Charta Mercatoria*; adding farther, that ſome Denizens were willing to pay the like Cuſtom upon the ſame Immunities to them to be granted, and doth aſſign his Officers to gather it; but with this Clauſe, *Si gratanter & abſque Coercione ſolvere voluerint, ita quod aliquem Mercatorem de Regno & Poteſtate noſtra ad Præſtationes & Coſtumas hujuſmodi*

modi invitè ſolvendas nullatenus deſtringatis. Nothing can more plainly expreſs, that the King's Intention was not to demand this by way of Prerogative, but by Force of the Contract. If there were ſuch a Prerogative in the Crown, as of Right to have Cuſtom, how cometh it to paſs that this Prerogative never yet had Fruit or Effect?

For this I can maintain, that the King of *England* hath not one Penny Cuſtom or Impoſition upon Merchandizes elder than the fourth Year of Queen *Mary*, that he holdeth not by Act of Parliament, and by the People's Grant.

The eldeſt that he hath is that of Wools, Wool-fells, and Leather, and that is by Act of Parliament, as appeareth in the Statute 25 *Edw.* I. *cap.* 7. The Tonnage and Poundage by Parliament in the firſt Year of every King's Reign. 25 Edw. I. cap. 7.

The Aliens Increaſe of Cuſtom by Parliament, 27 *Edw.* III. *cap.* 26. Then this Prerogative hath been much neglected, that it was never called on to be put in Execution 'till now of late Years.

Concerning the Statutes made for reſtraining our Kings from the Exerciſe of his intended Prerogative, which is the third Matter I ſtand upon; Statutes.

Thoſe that have maintained the King's Prerogative in this Point, have endeavoured to interpret thoſe Statutes to extend only to reſtrain him from impoſing upon Wool, Wool-fels, and Leather, which are Staple Commodities.

And the Reaſon they give for this Reſtraint, more than for other Good, is becauſe the King by Statute is reſtrained to a Cuſtom certain for thoſe Commodities, as the half Marc a Sack of Wool, and half a Marc three hundred Wool-fels, and thirteen Shillings and four Pence a Laſt of Leather.

And therefore great Reaſon he ſhould not exceed this Cuſtom in thoſe Commodities.

ANSWER *to this Objection.*

This Objection receiveth many Anſwers.

Firſt, It appeareth both by the expreſs Letter of divers of the Laws made in this Point by the Occaſion that induced the making of the Laws, and by the Execution of them, that all other Wares and Merchandizes, as well as thoſe of the Staple, were within the Purpoſe and Intent of thoſe Laws.

Secondly, The Reaſon alledgeth why there ſhould be Reſtraint for the Staple Commodities rather than for the other, is miſtaken.

For the Lords and Commons did grant to *Edw.* I. by Act of Parliament, the Cuſtom of the half Marc for Wool, Wool-fels, and Leather, which was Matter of mere Grace and Liberality, and includeth

cludeth no Reſtraint in it, but rather a favourable Extenſion, quite contrary to the Senſe of the Objection; according to that Rule of Interpretation, *Gratioſa ampliora, decet odioſa reſtringi.*

And admit ſome Laws be made expreſsly to reſtrain Impoſitions upon Wool, Wool-fels, and Leather; by reaſon that the Occaſion of making ſuch Laws, which was the actual impoſing upon thoſe Goods at that Time, ſhall we not by good Conſtruction, *ſecundum mentem extenſivam Legis*, extend this Law to other Wares and Merchandizes, that are within the ſame Miſchief?

If we look to the Reaſon of the Law, we ſhall make no doubt of it; for that is becauſe the Impoſitions were without the Aſſent of Parliament, not becauſe they were upon ſuch and ſuch Commodities.

Beſides, thoſe Laws ſo made are *Declarativæ Juris antiqui, non introductivæ novi.*

In the Enumeration of thoſe Statutes, which I conceive make directly for this Purpoſe,

I will endeavour rather to anſwer the Objections made againſt them, than to enforce the Senſe and Meaning of them; which is very plain and open, and needs no Interpretation.

The Firſt Statute enforced is *Magna Charta, cap.* 30. made in the 9th Year of *Henry* III. by which it is enacted, That all Merchants ſhall have free Regreſs and Egreſs out of and into this Realm, with their Goods and Merchandizes, to buy and ſell, *ſine omnibus malis Tolnetis, per antiquas & rectas Conſuetudines.*

In which Words we may infer, that both the Uſe and Right of impoſing are abſolutely excluded and debarred:

For *Conſuetudo*, which in this Caſe is to be taken for Uſage, which is *Mos* (not improperly for *Portorium*, a Duty paid in Money, as our *Engliſh* Word Cuſtom in one Senſe doth ſignify) implieth a Beginning and Continuance by Power and Enforcement, which cannot be a Cuſtom:

And therefore it cannot be an Impoſition: For that ariſeth merely out of the Will and Power of their Impoſer, and is againſt the Will of him upon whoſe Goods it is ſet.

But take *Conſuetudo* either for *Mos* or *Portorium*, the Epithets with which it is qualified, *Antiquum & Rectum*, do deſcribe it to be of that Nature, that it cannot be an Impoſition:

For *Antiquum* in legal Conſtruction is that, which is time out of mind, that is, not an Impoſition: For then, by Continuance of Time, it ſhould grow a Right by Preſcription, and were juſtifiable.

Rectum

Rectum implieth a limited Right, which inferreth there may be a Wrong, and Exceeding of that Right which is not in Impoſitions:

For if there be a Right in the King to impoſe, the Quantity, Time, and other Circumſtances are in his Diſcretion:

The Right is illimited;

And if he ſet on never ſo great an Impoſition, there is as much Right in it as if it be never ſo ſmall.

The Exceſs maketh it a Burthen, but not a Wrong.

We may farther obſerve, That in the Statute, *Malum Tolnetum*, which is Evil Toll, is ſet down by way of Antitheſis to *Antiqua* and *Recta Conſuetudo*; by which is inferred, that Exactions upon Wares and Merchandizes not qualified, with theſe two Properties, *Antiquum* and *Rectum*, are evil and unjuſt.

This is made more evident by a Record in the Tower of the 16th Year of *Henry* III. which was a Mandate ſent by the King to the Cuſtomers of his Ports for the Execution of this Law made in the 9th of *Henry* III.

Whereby it is commanded, *Quod omnibus Mercatoribus in Portum ſuum venientibus cum Vinis & aliis Merchandizis ſcire faciant, quod ſalvò & ſecurè in terram Angliæ veniant cum Vinis & Merchandizis ſuis faciendo inde rectas & debitas Conſuetudines, nec ſibi timeant de malis Tolnetis, quæ iis faciat Rex, vel in terrâ ſuâ fieri permittat.*

By this Record the Word *Conſuetudo* is interpreted to be *Mos*, not *Portorium*; otherwiſe it ſhould have been *ſolvendo Conſuetudines*, not *faciendo*.

Alſo theſe Words *Antiquum & Rectum* in the Statute, in this Writ are *Rectum & Debitum*, which doth more enforce a Certainty of Right and Duty, which by no means can be intended in Impoſitions.

Objections were made againſt this Law in the laſt Argument:

Firſt, That it was made for Aliens.

This is true: The Words of the Law do plainly ſhew it was made for Aliens:

But if the State was ſo careful to provide for them, Shall we not judge that with Denizens it was ſo already? and that this Statute was made to extend that Liberty by Act of Parliament to Aliens, which Denizens had by the Common Law?

Succeeding Times did ſo conceive of it; as appeareth by the Statute 2 *Edw.* III. *cap.* 9.

The Words are, That all Merchants, Strangers and Princes may go and come with their Merchandizes in *England*, after the Tenor of

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the Great Charter; and that Writs be thereupon ſent to all the Sheriffs in *England*, and to Mayors and Bailiffs of good Towns, where need ſhall require.

A *Second* Objection was made in the laſt Argument out of theſe Words of the Statute of *Magna Charta:*

That Merchants might freely Traffick, *niſi publicè antea prohibiti fuerint.*

By which was enforced, that the King had Power to reſtrain and prohibit Traffick, therefore to impoſe. It is agreed, there may be a publick Reſtraint of Traffick, upon reſpects of the Common Good of the Kingdom:

But whether that, which is called *Publica Prohibitio* in the Statute be intended by the King alone, or by Act of Parliament, is a Queſtion.

For ſuch Reſtraints have ſtill been by Parliament.

But admit the King may make a Reſtraint of Traffick in part for ſome publick Reſpect of the Common-wealth, he doth this in Point of Protection, as truſted by the Common-wealth to do that which is for the Publick Good of the Kingdom: But if he uſe this Truſt to make a Gain and Benefit by impoſing, that is a Breach of the Truſt, and a Sale of Government and Protection.

But more of this ſhall be hereafter ſpoken in the anſwering of the main Objections.

25 Edw. I. cap. 7. The next Law is, that notable Statute of *Edward* I. in the 25th Year of his Reign, made upon the very Point in Queſtion.

The Words are theſe:

And for ſo much as the more Part of the Commonalty of this Realm find themſelves ſore grieved with the Male Toll of Wools; that is, to wit, a Toll of Forty Shillings for every Sack of Wool; and have petitioned to us for to releaſe the ſame: We, at their Requeſt, have clearly releaſed it, and have granted for us and our Heirs, that we ſhall not take ſuch Things without their common Conſent and Good-will; ſaving to us and our Heirs the Cuſtoms of Wools, Skins and Leather granted before by the Commonalty aforeſaid.

Againſt the Application of this Law to the Queſtion now in hand, many Objections were made;

Some out of Matter precedent to the Law;

Some out of the Law itſelf;

Some out of Matter ſubſequent and following after the Law.

I. For

I. For Matter precedent, it was objected out of *Thomas Walſingham*, an Hiſtoriographer of good Credit, that writ of that Time when the Statute was made.

Tho. Walſingham in Edw. I. fol. 71, 72, 73. edit. per W. Camden, impreſſ. Francofurti, 1603.

That in the Petition of Grievance made to King *Edward* I. by the People the 25th Year of his Reign; upon which Petition the Statute was made, that they found themſelves not grieved in Point of Right, but in Point of Exceſs.

The Words are,

Communitas ſentit ſe gravatam, de vectigali Lanarum quod nimis eſt oneroſum, videlicet, de quolibet Sacco 40 *Solidos, & de Lana fracta ſeptem Marcas.*

So they expreſs the Cauſe of their Grief, that it was too heavy; which is to be applied to the Point of Exceſs, not of Right.

To this I anſwer,

That if the Words had been, *Quia eſt nimis oneroſum*, this Conſtruction might have been made out of them; becauſe the Word *quia* had induced a Declaration of the Cauſe of that, which was formerly affirmed.

But the Words are, *Quod nimis oneroſum*, which doth only poſitively affirm, that the Impoſition *de facto* was intolerable for the Greatneſs of it; which doth not therefore admit, that it is tolerable, in reſpect of the Right the King had to impoſe.

But this is made clear by the general Word *Precedent* in the Preamble of the Petition, which doth evidently infer, they grounded their Complaint upon Point of Right, not upon Point of Exceſs.

The Words are theſe:

Tota Terræ Communitas ſentit ſe valde gravatam, quia non tractantur ſecundum Leges & Conſuetudines Terræ, ſecundum quas tractari Anteceſſores ſui ſolebant habere, ſed voluntarie excluduntur.

After which Preamble, among the Particulars, this of forty Shillings upon a Sack of Wool is ranked; but with a Dependency of that expreſſed in the Preamble for the Point of Right.

But ſeeing we light upon Hiſtory, which though it be of ſmall Authority in a Law Argument, yet being the Hiſtory of our own Realm, hath fit and proper Uſe in the Common Council of the Realm, I will purſue it a little farther.

Out of *Matth. Weſtm.* a Writer that lived much nearer the Time than *Thomas Walſingham*.

Matth. Weſtm. fol. 430. edit. per H Savile. Mil. Francofurti, 1601.

He ſaith, that the Commons by their Petitions required, *Ne Rex de cætero tallagia uſurparet, & voluntarias ſuper his inductas exactiones de cætero quaſi in irritum revocaret.*

By

By which it appeareth, that the Point of the Complaint was, that the Exactions laid on them were voluntary, that is, at the King's Will, without Aſſent of Parliament.

II. Second Objection, out of the Law itſelf: It hath much been preſſed:

As *Firſt*, the Commons made Petition to the King.

Whereupon they infer out of the Nature of the Word *Petition*, That their Proceeding was by way of Grievance for the Exceſs and Inconvenience, as a Matter of Grace, not in Courſe of Juſtice for the Wrong.

To this I anſwer,

That conſidering the Qualities of the Perſons to this Action, it being between the King and the Subject;

Duty and Good Manners doth induce Gentleneſs and Humility of Terms, without Blemiſh or Diminution of the Force of Right.

It is according to the Demeanour of *Job* ix. 15. *Though I were juſt, yet would I not anſwer; but I would make Supplication to my Judge.*

But in our Forms of Law, be the Right of the Subject never ſo clear, manifeſt, and acknowledged by all; yet if his own be detained from him by the King, he hath no other Writ or Action to recover, but a mere Petition: *Supplicat Celſitudini, &c.* So that if the Word *Petition* to the King infer Defect of Right in the Petitioner, there can be no Caſe where the King can do the Subject Wrong.

2. A *Second* Objection out of the Body of the Law is,

That the King doth releaſe that Impoſition of forty Shillings, which implieth a Right ſettled in him.

But to this I anſwer,

That it is no neceſſary Inference, That whereſoever a Releaſe is, there a Right is: For it is uſed for Claim only, or where Poſſeſſion was, though wrongful, and that in *majorem Securitatem, quia abundans Cautela non nocet.*

But in this Caſe a Releaſe was very expedient, and for ſome Reſpect neceſſary to extinguiſh a Right the King had in this Impoſition againſt Merchants themſelves.

For this Impoſition, though it were not ſet on by Aſſent of Parliament, yet was it not ſet on by the King's abſolute Power;

But was granted to him by the Merchants themſelves, who were to be charged with it.

So the Grievance was the Violation of the Right of the People in ſetting it on without their Aſſent in Parliament.

Not

Not the Damage that grew by it: For that did only touch the Merchants, who could not juſtly complain thereof, becauſe it was their own Act and Grant.

This appeareth by two notable Records:

The one 22 *Edw.* I. A Writ to the Treaſurer and Barons of the *Exchequer* in *Ireland*, to diſcharge the Merchants there of Impoſition on Wools: In which the King reciteth, 22 Edw. I. Orig. in Scacc. Rem. Theſ.

Licet in Subſidium guerræ Regis pro recuperanda terra Vaſconia Mercatores gratanter conceſſerunt per biennium vel triennium, ſi tantum duraverit Guerra, de Sacco Lanæ, &c.

The other Record is the Writ of Publication, that of 26 *Edw.* I. went out after the Statute of 25. In which Writ the King reciteth thus: 26 Edw. I. Mem. Scacc. Rem. Theſ.

Cum nos ad inſtantiam Communitatis Regni noſtri remiſerimus Cuſtumam 40 *s. nobis nuper in ſubſidium Guerræ noſtræ contra Regem Franciæ conceſſum, &c.*

3. A *Third* Objection made out of the Body of the Statute by thoſe which have argued on the contrary Part, was upon theſe Words, That the King would take *no ſuch Things* without common Conſent. By which Words they conceived the Intention of the Law was limited preciſely to Impoſitions ſet upon Wool, and not upon their Commodities, which are not *ſuch Things*, but other.

And for this they alledge this Reaſon, That it was not probable when the Complaint was only for an Impoſition on Wool, That the King would give a Remedy for other Things not ſpoken of, for which there was no Cauſe of Complaint.

To this a full Anſwer is given many Ways:

Firſt, Out of the Saving in the Act, which extends to other Things than to Wool, as to Wool-fels and Leather.

Therefore the Purview of the Act by theſe Words *ſuch Things*, extendeth to more than the Wool:

For there needs no Saving, but for that which is contained in the Purview.

Secondly, The Reaſon alledged, That no more by likelihood ſhould be remedied but for Wool, becauſe that only was complained of, is falſe:

For the Complaint of the Commons was not only for this Impoſition on Wool, but divers other Burthens and Grievances of the like Nature.

And this will appear, if we compare all Parts of the Law; the one with the other:

For this Law is in the Form of a Charter, written in *French*, and beginneth thus:

A *Edward*, by the Grace of God, *&c.*

And is an entire Grant and Inſtrument without Fractions, Sections, and Chapters, as it is now printed; and containeth in it, next before this laſt Clauſe concerning the Impoſitions on Wools, which in the printed Books is *Cap.* 6.

"That the King, for no Buſineſs from thenceforth, will take no "manner of Aids, Miſes nor Prizes, but by common Aſſent."

This Word *Miſes* ſignifieth properly in *French*, *Impoſitions*; derived of the Word *mitto*, in *Latin*, *to put*. So the Words *ſuch Things*, is a Concluſion to all the Premiſſes, and hath a Relation not only to that which is made *cap.* 7. by the Printer, and concerneth the Male Toll of Wools; but to that preceding which is, *all other Aids*, Impoſitions, and Takings.

Mem. Stat. in 26 Edw. I. apud Rem. Theſ.

The Writ of Publication of this Statute ſent out to all Parts in 26 *Edw.* I. maketh plain this Conſtruction.

The Words of it are,

Concedentes, quod Cuſtumam illam vel aliam ſine voluntate, vel communi Aſſenſu non capiamus.

Theſe Words *vel aliam* are indefinite, and extend to any other whatſoever, beſides that of Wools.

The Writ doth farther diſcharge Merchants for the Commodities of Wools, Wool-fels, and Leather, which are not complained of by Name in the Statute:

And therefore the Law was intended to other Impoſitions, as well as to thoſe upon Wools.

III. The Objection made out of Matter ſubſequent to the Statute was this:

That notwithſtanding the Law of 25 *Edw.* I. Impoſitions, that before the Statute had been ſet on other Merchandize than Wools, were ſtill anſwered after the Statute.

16 Edw. I. Orig. Rem. Theſ.

And for Inſtance of this was alledged, That whereas 16 *Edw.* I. an Impoſition of four Shillings the Ton was ſet upon Wines brought into the Kingdom, an Account was made of this in the *Exchequer* in 26 *Edw.* I. as by the Records there appeareth. By which it ſeemeth that the Law 25 *Edw.* I. was not taken to extend to Wines and ſuch other Commodities, other than Wool named in the Statute.

ANSWER.

It is true, ſuch an Impoſition was ſet on by *Edward* I. in the 16th Year of his Reign, and an Account made of it in the 25th and 26th.

But it appeareth by the Record of the Account, that it was made for the Time ended before the Statute was made.

As

As from the 18th of *May*, 16 *Edw.* I. to the 23d of *July*, 22 *Edw.* I. But there is no Record that ever any Account was made for any Money received for that Impoſition for the Time after the Statute was made.

Neither was it very willingly anſwered before:

For it appeareth by the Record, that it was ten Years after the ſetting of it.

The Third Statute alledged on the behalf of the Subject, is that of 34 *Edw.* I. *cap.* 1.

The Words are theſe:

"No Tallage or Aid ſhall be taken or levied by us or our Heirs in "our Realm, without the Good-will and Aſſent of our Archbiſhops, "Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the "Land."

Againſt this was objected, That this Statute was intended only upon the Taxes and Impoſitions of Things.

The Word *Auxilium* makes it clear, that it is to be intended farther than of Things within the Realm:

For *Tallagium* is intended commonly of domeſtical Taxes; but *Auxilium* is the moſt uſual Word for Impoſitions upon Goods imported and exported; as by the Acts of Parliament by which ſuch Impoſitions are given to the King; in which they are moſt commonly called by the Name of *Aids*, as proceeding of Good-will and Benevolence.

The Fourth Statute alledged on this Part, is that of 5 *Edw.* II. *cap.* 14. juſt in Point of the Matter in Queſtion: 5 Edw. II. cap. 14. Rot. Ordination.

And therefore I will ſet it down, as I find it *verbatim* in the Record in the *Tower*:

Enſement novelles Cuſtumes ſont leviez & ancientez enhaunces, come ſur levies drapes, vine avoir du pois & autre choſes pur quoy les Merchants veynant pluis richement & meynes de bien, meignont en la terre, & les Merchants eſtranges demurront pluis longement que ils ſoloient faier, pur le quel demoure les choſes ſont le pluis enhauncez que ils ne ſoloient eſtre, au damage de Roy & de ſon people; Nous ordenouns que toutz maneres des Cuſtumes & Mal-tolls levies puis de Coronement le Roy Edward fitz de Roi Henry ſoient entierment ouſtes & de tout eſteintz par toutz jours, nient contriſteant de Chartre que le dit Roi Edward fiſt as Merchants aliens, pur ceo que il fuit fait contre le grand Chartre, & encountre le Franchiſe de la Citee de Londres, & ſantz aſſent de Baronage, &c.

Savant nequedent au Roi les Cuſtumes de Leynes, peaulx & de quirs &c. *ſi avet le doet.*

By this Law is recited, that by the levying of new Cuſtoms, and by raiſing of the old, Traffick was deſtroyed, and all Things made dear.

And therefore all new Impoſitions and Cuſtoms were diſcharged *Charta Mercatoria*, by which Cuſtom increaſed on Aliens was taken away, and the Reaſon alledged, becauſe it was *ſans Aſſent de Baronage*, and againſt the great Charter:

And this is farther with this Clauſe, Saving to the King his Cuſtom of Wool, Wool-fels, and Leather, *ſi aver les doet*.

Great Wars have been raiſed againſt the Credit of this Law in the Parliament Houſe;

And Three Things have been eſpecially objected againſt it:

Firſt, That it is no Law: For it was enforced upon the King by ſome of the Nobility that were too ſtrong for him; the Realm being then in Tumult and Mutiny about the Quarrel of *Pierce Gaveſton*; ſo never had the King's free Conſent: But he gave way unto it for fear of greater Miſchief.

Secondly, That in itſelf it is unjuſt, as in taking away the Cuſtom granted to the King by *Charta Mercatoria*, 31 *Edw.* I. and in making Doubt, whether the King ſhould have the Cuſtom of Wools, *&c.* as by thoſe Words, Saving it to him, *ſi aver les doet*.

The *Third* Objection is, That if it were a Law, it is repealed.

To theſe I give particular Anſwers.

To the *Firſt*, That this Statute was made both at the Inſtance of the King and People, with a Purpoſe and Intention on all Parts to ſettle Things in a Stay and Order, both in the King's Houſe and Common-wealth;

The King and his Nobles ſtanding in good Terms when this Buſineſs was taken in hand.

And it was begun and ended with great Solemnity and Ceremony:

For the King, in the third Year of his Reign, gave Commiſſion under his Great Seal to thirty-two Lords Spiritual and Temporal;

Of which there were eleven Biſhops, eight Earls, and thirteen Barons; they being as Committees of the Higher Houſe, to deviſe Ordinances for the good Government of his Houſe and his Realm.

In which Commiſſion he doth, for the Honour of God, the Good of him and his Realm, of his Free Will grant to the Prelates, Earls, and

and Barons, and others elected by the whole Kingdom, full Power to ordain the State of his Houſe and Realm, by ſuch Ordinances as by them ſhould be made, to the Honour of God, the Honour and Profit of Holy Church, the Honour of himſelf, the Profit of Him and his People, according to Right and Reaſon, and the Oath he made at his Coronation.

Theſe joining with others of diſcreet Commons in Parliament, and taking every of them a ſolemn Oath for their ſincere Demeanor in the Buſineſs, did make this and other Ordinances, which were ſo well liked by the King, that after they were made he took an Oath to obſerve them;

And cauſed them to be publiſhed in *Paul's Curch-yard* by the Biſhop of *Saliſbury*, by denouncing Excommunication againſt all that ſhould willingly infringe them:

And by his Letters Patents dated 5° *Octob.* 5° *Regni ſui*, did ſend them through the Realm to be publiſhed, and from thenceforth to be obſerved:

Thereby ſignifying his great Liking and Approbation of them.

After which they had the Force and Power of Laws given unto them in Parliament, in the fifth Year of his Reign.

The *Second* Objection, which is the Unjuſtneſs of the Law, inſtanced in two Points;

The taking away of *Charta Mercatoria*, and the doubting of the King's Right to the Cuſtom of Wools, Wool-fels, and Leather, *&c.*

ANSWER.

To the *Firſt* of theſe I deny it to be unjuſt, but according to the Law of *England*, and the Liberty of the Kingdom.

For that Charter did contain in it divers Grants of Things, which were not in the Power of the King to grant, without Aſſent of Parliament.

As the Tryal *per medietatem Linguæ*, and other Things tending to the Alteration of the Law, and burthening of the People.

And therefore that Charter never had its undoubted and ſettled Force, until it was confirmed by Act of Parliament, but lay aſleep almoſt twenty Years together without being put in Execution, between 5 *Edward* II. and 27 *Edward* III. when it was confirmed.

For the Doubt that is ſuppoſed to be made in the Statute of the King's Right, to the Cuſtom of Wool, Wool-fels, and Leather, I take it there is no ſuch Doubt made; for the Words (ſaving the King's Right to the Cuſtom of Wools, Wool-fels, and Leather, *ſi aver les doit*) hath this Conſtruction, that is, at ſuch Times as he ought to have it:

So the Word *ſi* hath the Signification of *quando*, for it had been a Folly to have made a Saving of that, of the Right whereof they had doubted:

Neither is it likely but that they would have taken it away if it had not been lawful; but there was no Colour to doubt of the Right of it:

For it was given by Act of Parliament, and ever continued in Force, without Challenge or Exception in the Lawfulneſs of it.

The *Third* Objection is, That this Statute is repealed.

To this I plead, *nullum tale recordum:*

If it be repealed, it muſt be by Act of Parliament, for *unumquodque diſſolvitur iiſdem modis quibus eſt colligatum.*

I and others have ſearched the Records of the Realm, and endeavoured by all means to inform ourſelves of the Truth therein, and we can find no Act of Parliament of repeal.

The Truth is, ſome Kings finding thoſe Laws not to ſort to their Wills and Humours, have endeavoured to ſuppreſs them; but they did never yet obtain a Repeal of them by Act of Parliament.

But it is further urged, That although there were no formal Repeal of the Law, yet it was never put in Execution as a Law, but even preſently upon the making was rejected, and Uſe and Practice went quite againſt it.

And for Inſtance hereof a Record was vouched, that *Edward* II. held himſelf ſo little bound by it, as that in the eleventh Year of his Reign he ſet an Impoſition without Aſſent of Parliament upon Wool, Wool-fels, and Leather, Wine, Cloth, *Aver du Pois*, and divers other kind of Merchandizes.

To this I anſwer,

That if it were true, that a weak and impotent King as he was did contrary to the Law, doth this make the Law void, and no Law?

But if we look into the whole Record, and ſcann this Action of *Edward* II. from the Beginning of it unto the End, we ſhall find a very good Inſtance to prove the Practice and Execution both of this Law of 5 *Edward* II, and of that in 25 *Edward* I.

For it is true that *Edward* II, in the eleventh Year of his Reign, did borrow of the Merchants a certain Sum of Money above the due Cuſtoms of Wool, Wool-fels, Wine, *Aver du Pois*, Leather, and other Goods imported and exported.

But it appeareth by the Record he took it but for one Year, he took it by the Advice and Counſel of the Merchants, and he took it *per viam mutui*, as a Loan:

Rot. Clauſ. 11 Edw. II. The Diſcretion of the Writ is, *Collectoribus mutui nobis per Mercatores Alienigenas, & Indigenas, de certis rebus & Merchandizis uſque ad certum tempus faciendi.*

This

This was done in good Terms; he did not claim it as his Right, but did borrow it, which I think is a good Evidence againſt his Right: But what became of this?.

The State would not abide it for all theſe fair Shews.

And therefore the King ſendeth out other Writs, by which he diſchargeth all Merchandizes of this Loan, ſave only Wool, Wool-fels, and Leather, and for the ſame Loan taken upon thoſe Commodities, it was limited to continue but till *Michaelmas* after, and good Security was given to the Merchants by the Cuſtumers to pay themſelves by way of Defalcation out of the Cuſtoms, which ſhould be due after *Michaelmas*, thoſe Sums which were ſo borrowed of them.

The Words of the Record are worth the obſerving:

Cum pro expeditione guerræ Scotiæ & aliis arduis & urgentibus neceſſitatibus nobis multipliciter incumbentibus, pro quarum exoneratione quaſi infinitam pecuniam refundere oportebit, pecuniæ plurimæ indigeamus in præſenti, & nuper pro eo quod exitus Regni & Terrarum noſtrarum ſimul cum pecunia nobis in ſubventione præmiſſorum tam per Clerum quam per Communitatem Regni noſtri conceſſa ad ſumptus prædictos cum feſtinatione qua expediret faciendos, non ſufficiunt, exquirentes vias & modos quibus pecuniam poſſemus habere commodius & decentius pro præmiſſis, de conſilio & adviſamento quorundam Mercatorum tam Alienigenarum quam Indigenarum, viam invenimus infraſcriptam, videlicet: Rot. fin. 11 Edw. II.

And ſo ſetteth down the Manner of the Loan, and the Security for the Payment of it.

This, I take it, was neither an Impoſition, nor a Wrong in any reſpect.

Alſo by the firſt Record it appeareth that the Loan ſet on Wine, *Aver du Pois*, and ſuch other Commodities beſides, Wool, Wool-fels, and Leather were preſently diſcharged by *Edward* II, which ſheweth they were taken to be within the Extent of the Statute of 25 *Edward* I.

The Firſt Statute alledged on Behalf of the Subject, is that 14 *Edw.* III. *Stat.* 1. *cap.* 21. by which the Commons pray the King to take no more than the old Cuſtom of the half Mark.

The King prayed Aids of the Commons for a Time above the Cuſtom upon his Neceſſity of Wars:

And the Concluſion is, That by that Act the King doth grant that after the *Feaſt of Pentecoſt* twelve Months following, he will take no more of Wools, Wool-fels, and Leather, but the old Cuſtom; and doth promiſe to charge, ſet, or aſſeſs upon the Cuſtom, but in manner as aforeſaid.

The Sixth Statute is 14 *Edward* III. *Stat.* 2. *cap.* 1. the King doth grant by way of Charter, to the Prelates, Ears, Barons, Commons, Citizens,

Citizens, Burgeſſes, and Merchants, that they be not from thenceforth charged nor grieved to make any Aid or ſuſtain Charge, if it be not by the common Conſent of the Prelates, Earls, Barons, and other great Men and Commons of the Realm, and that in Parliament.

Theſe two Statutes grew upon Occaſion of an Impoſition ſet on Wool by the King, without Aſſent of Parliament.

Little hath been objected againſt them, but only to the firſt, that it was obtained of Grace, and not upon Inſtance of Right, which they gather out of the Words of the Law, which are,

The Commons pray the King that he would ſtabliſh, that from thenceforth no more but the old Cuſtom be taken.

The like Reaſon may be made againſt the King, out of the ſame Words in the ſame Law; for the King in the ſame Act prayeth the Commons to give him an Impoſition upon Wools for a Time above the old Cuſtom, but the Record of the Petitions exhibited in Parliament, upon which thoſe two Laws are made, cleareth the Objection.

The firſt was delivered by the Lords in this Form:

Rot. Parl. 13 Edw. III. N°. 5.

Les Grandes volunt, That the Mal-Toll ſet on Wools newly, be altogether abated, and that the old Cuſtom be held, and that they may have this in point of Charter, and by Inrollment in Parliament.

This Word *volunt* had been too high for a Suit of Grace, and therefore muſt be intended of Right.

The Commons Petition in Form is ſomewhat humble, but in Effect and Purpoſe is rough and ſtern.

The Words are theſe:

The Commons pray that the Mal-Toll of Wools be taken as it was uſed in ancient Time, which is now enhanced without the Aſſent of the Commons and Grandees, as we conceive, and that, if it be otherwiſe demanded, that every one of the Commons may arreſt them without being challenged.

According to theſe Petitions, the firſt of theſe two Laws is by Enrollment in Parliament.

The ſecond is in Form of a Charter.

The firſt doth expreſs ſome ſpecial Commodities.

The ſecond doth reach generally at all.

The ſeventh Law directly touching this Point is that 14 *Edw.* III. *Stat* 2. *cap.* 2. the King doth grant, according to the great Charter, That all Merchants, Denizens, and Foreigners, may without lett ſafely come into the Realm of *England* with their Goods and Merchandizes, and ſafely tarry and ſafely return, paying the Subſidies, Cuſtoms, and other Profits reaſonably due.

Upon the Words of this Law was great Advantage taken in this, that beſides Cuſtom and Subſidies, which concern all the certain and ordinary

ordinary Duties, the King hath upon the Wares and Goods of Merchants, there are other Profits ſpoken of to be due:

These they affirm cannot be underſtood but of Impoſition by the King, without Aſſent of Parliament.

To this I anſwer,

If there were not Duties due to the King beſides Cuſtom and Subſidy, which might ſatisfy the Intention of theſe Words, this Objection might have had ſome Colour in it:

But it is plain that beſides theſe two, there are other Profits due to the King upon Merchant's Goods, as Scavage, Tonage, and the like.

And you ſhall find a Petition in Parliament, 50 *Edward* III, againſt raiſing of theſe above the old Rate. Rot. Parl. 50 Edw. III. No. 163.

The Eighth Law is 15 *Edward* III. *Stat.* 2. *cap.* 5, whereby it is enacted, That every Merchant may freely buy and ſell, and paſs the Sea with their Merchandizes of Wool, and all other Things, paying the Cuſtom of old Time uſed, according to the Statute made the laſt Parliament in *Mid-Lent*, which was the Statute 14 *Edward* III. *Stat.* 2. *cap.* 2.

This Law doth expreſly exclude the Novelty of Impoſitions.

The Ninth Law is that 18 *Edward* III. *Stat.* 1. *cap.* 3, whereby it is enacted, That the Sea be open to all manner of Merchants to paſs with their Merchandizes where it ſhall pleaſe them.

The Tenth is 27 *Edward* III. *Stat.* 2. *cap.* 2. For the Aſſurance of Merchant Strangers, and others:

The King doth will and grant for Him, and his Heirs, that nothing ſhall be taken over the due Cuſtom, nor taken of them to his Uſe by Colour of Sale, nor in any other Manner againſt their Wills.

The Eleventh is 38 *Edward* III. *cap.* 2. That all manner of Merchants, Aliens, and Denizens, may buy and ſell all manner of Merchandizes, and freely carry them out of the Realm, paying the Cuſtoms and Subſidies thereof due.

The laſt is 22 *Henry* VIII. *cap.* 8, by which it was enacted, That Tables ſhould be ſet up in Ports, by which the Certainty and very Duty of every Cuſtom, Toll, and Duty, or Sum of Money to be demanded and required of Wares and Merchandizes, ſhall and may plainly appear and be declared, to the Intent that nothing be exacted otherwiſe than in old Times hath been uſed and accuſtomed.

By this Law it appears that the Judgment of the Parliament was at that Time that nothing was due upon Wares and Merchandizes, but that which was certain, and had been anciently due, by which Impoſitions are excluded, whoſe Qualities were Novelty and Incertainty, as being ſet on as preſent Occaſion moveth, and proportioned

for Quantity and other Circumſtance, as the Will of the King directeth.

Theſe are the Laws which I conceive moſt directly tend to the reſtraining the Kings of *England* from the Exerciſe of that irregular Power of impoſing, at the firſt offered by them to be put in Execution, yet not preſſed as their Right, and never practiſed but upon Oppoſition of the whole State, and at laſt deſerted and given over until of late, as by that which followeth in the fourth Place will appear.

Cuſtom 4. My fourth and laſt Aſſertion is, That this Practice of impoſing, without Aſſent of Parliament, is *contra morem majorum.*

In this I will make an Hiſtorical Perluſtation of the Times paſt, whereby I will diſcover and make known what Paſſages have been in this Buſineſs in this Kingdom, and eſpecially in the High Court of Parliament, for the Space of three hundred Years and more laſt paſt, ſince the Beginning of the Reign of *Edward* I, ſince which Time, and not before, this Kingdom hath grown into the Glory and Reputation of foreign Traffick:

And as a worthy Gentleman of the King's learned Council made certain Conſiderations upon the Queſtion, framed and ſtrengthned out of the Greatneſs of his Wit and Reaſon,

So I, grounding myſelf upon the Practice of former Times, which is the ſafeſt Rule whereby to ſquare the Right both of King and People, in this Common-wealth, where their Right is *Jus Conſuetudinarium*, a Right that groweth by Uſe and Practice,

Will propoſe unto you certain Obſervations out of the Action and Experience of former Times, until the Reigns of the two late Queens, by which you may the better ground and frame your Judgments in the Determination of the Right in this Queſtion.

I. My *Firſt* Obſervation is in Point of Circumſtance, That there was never any Impoſition ſet but in Time of Actual War, and *duplicatis vexillis:*

They are ſet on very rarely and ſparingly, but for a ſhort Time, and that certain and definite, and upon ſome few Commodities, and that by the Aſſent of the Merchants that were to bear the Burthen.

In our Time the Occaſion not ſo ſenſible, the Continuance to be perpetual, the Number many Hundreds, almoſt no kind of Country ſpared.

I will give you ſome few Inſtances of theſe Circumſtances out of the Records themſelves.

INSTANCE

INSTANCE I.

The Mal-Toll of Wool, ſet on by King *Edward* I, which gave the Occaſion of the Statute in the 25th Year of his Reign, was given by Merchants. 22 Edw. I. Orig. Scacc. Rem. Theſ.

The Record ſaith *Mercatores gratanter conceſſerunt in ſubſidium guerræ Regis.*

It further ſheweth it was for his Neceſſity of War, which then was great alſo.

INSTANCE II.

For the Time of *Edward* III. there need not many Inſtances, for his whole was almoſt an actual Warfare; Rot. Parl. 17 Edw. III. N°. 28.

As in the ſixth Year of his Reign, for his War in *Scotland* and *Ireland.*

In the thirteenth Year of his Reign for his War in *France*, ſeveral Impoſitions were ſet on.

INSTANCE III.

In the ſeventeenth Year of *Edward* III, the Record in the *Tower* mentioneth that Forty Shillings was on a Sack of Wool by the Grant of Merchants, and it was in the Time of War.

INSTANCE IV.

In the twentieth Year of King *Edward* III, it appeareth in the Record that the Impoſition then put on Wool was by the Aſſent of the Merchants for two Years, for the Neceſſity the King had in the Paſſage over the Sea to recover his Right, and to defend the Realm. Rot. Parl. 17 Edw. III. N°. 18.

II. My *Second* Obſervation is, Never any Impoſition was ſet on by the King out of Parliament, but Complaint was made of it in Parliament, and not one that ever ſtood after ſuch Complaint made, but Remedy was afforded for it.

Et quod Rex inconſulto fecit; conſulto revocavit:

His Sovereign Power controlled his Subordinate.

In which it is a thing very notable, that the King in no one Caſe ever claimed, or ſo much as ever named his Right or Prerogative, which no donbt he would have done, if it had been thought due, but gave Satisfaction to the Complaint by one of theſe three Ways:

Firſt, Either by diſcharging them quite, and making ſome good Law againſt them. Or,

Secondly,

Secondly, By entreating the People to hold them ſome ſhort Time by their Favour. Or,

Thirdly, by waving his preſent Poſſeſſion, and taking that of their Gift by Act of Parliament, as in Aid, which he had ſet on by his abſolute Power as an Impoſition.

Inſtances of the firſt 25 *Edward* I, the Impoſition of Wool taken off, and a Law made againſt it;

And the King undertook for him and his Succeſſors to do ſo no more, 38 *Edward* III. *cap.* 36.

The Impoſition of Three Shillings and Four Pence on a Sack of Wool put off upon Complaint, and a Law made againſt it, 38 *Edward* III. *cap.* 2.

The like Statute 45 *Edward* III. *cap.* 4. on Wools, made in Parliament 45 *Edward* III. *Numb.* 42. *Rot. Parl.*

Inſtances of the ſecond Kind, 21 *Edward* III. *cap.* 11. A Petition upon an Impoſition of Two Shillings upon a Sack of Wool, Two Shillings upon a Ton of Wine, and Six Pence upon *Averdupois*.

All diſcharged preſently, ſaving the Two Shillings upon a Sack of Wool, and for that intreated that it might ſtay till *Eaſter* following, and ſo it did, and was then taken away.

Inſtance of the third 25 *Edward* III. N°. 22. The Commons made Petition againſt an Impoſition of Forty Shillings upon a Sack of Wool granted to the King by the Merchants, ſhewing that they ought not to be bound by their Act.

The King doth not claim Right or Juſtify, but becauſe his Wars were great, upon his Requeſt had it granted unto him for two Years by Act of Parliament; and pretended no Title of Prerogative, neither was it ever ſpoken of.

III. My *Third* Obſervation is, That our Kings have acknowledged that it is not in their Right:

Edward I. in the Writs he ſent to the Officers of his Ports to levy Three Pence on the Pound over the old Cuſtom of the Denizens, to enjoy thoſe Privileges the Aliens did enjoy by the Payment of the Increaſe of Cuſtom, doth give this Expreſſion directly, That they ſhould not take it of Denizens againſt their Will:

The Words of the Record expreſs it very fully.

Cum Mercatores Extranei & Alienigenæ, pro quibuſdam libertatibus eis per nos conceſſis & priſis noſtris quibuſcumque remiſſis, nobis de Bonis & Mercandizis ſuis quibuſcumque infra regnum & poteſtatem noſtram adducendis, ultra antiquas Cuſtumas dare conceſſerint Præſtationes & Cuſtumas ſubſcriptas, videlicet, &c.

And ſo ſetteth down the Increaſes, and among the reſt this Three Pence upon the Pound, and ſo proceedeth.

Ac quidem Mercatores de Regno noſtro & Poteſtate noſtra, ut ipſis dictis libertatibus & immunitatibus uti & gaudere, & quod de priſis quieti eſſe poſſint, Præſtationes & Cuſtumas hujuſmodi de Bonis & Mercandizis ſuis nobis ſolvere velint, ut accepimus, aſſignavimus vos, &c. ad Cuſtumas & Præſtationes prædictas de Mercatoribus de Regno noſtro & Poteſtate noſtra colligendas, qui eas gratanter & ſine coercione ſolvere voluerint.

Ita tamen, quod aliquem Mercatorem de dicto Regno & Poteſtate noſtra ad Præſtationes & Cuſtumas hujuſmodi nobis invito ſolvendas nullatenus diſtringatis.

Surely if *Edward* I. had claimed the Prerogative of impoſing, he would never have given theſe Cautions in requiring of that which he had taken as his Due, as that they ſhould not exact it of any of his Subjects that were not willing to pay it, nor trouble them nor diſtrain them for it.

In the twelfth Year of *Edward* III, we find the Record of certain Letters written from the King, being then at *Berwick* in the *Scottiſh* Wars, unto the Archbiſhop of *Canterbury*; in which Letter the King ſeemeth to have a great Confidence in the Devotion of the Archbiſhop, and therefore earneſtly entreateth him to farther his Enterprizes with his Prayers to God; and then addeth further, *Ad hoc, pater, cum populus Regni noſtri variis oneribus, tallagiis & impoſitionibus hactenus prægravetur (quod dolenter referimus, ſed inevitabili neceſſitate compulſi de eiſdem oneribus ipſum adhuc relevare non valemus) dictum populum, ut tantam neceſſitatem noſtram humiliter & benigne patiatur & caritive ſuſtineat, & priorem, quam penes nos concepit, de cætero inſtanter in orationibus & eleemoſynis ſuis (oneribus prædictis, quæ non ex malitia vel præſumptione voluntaria ipſum gravant, non obſtantibus) exhibeat caritatem, indulgentiarum muneribus & aliis modis, quibus ſecundum Deum æquum videbitis, piis exhortationibus inducatis, & nos penes eundem excuſetis; ſperamus namque per Dei gratiam, cujus manus cunctis indigentibus ſola ſufficiens, & largiflua comprobatur beneficiis compenſandis, dum populum viſitare & conſolari pro loco & tempore opportunis dignetur, &c.*

Rot. Alem. 12 Edw. III. dorſ. 22. in Turr.

The principal thing I note out of this Record, upon the very Point of this my *Third* Obſervation is, That the King intending to excuſe himſelf of the Burthens by him laid upon the People, and to avoid the Blemiſh of Wrong and Injuſtice in laying thereon, ſaith, they were not *onera ex præſumptione voluntaria*, that is, Burthens that he preſumed to lay on at his own Will, whereby he condemneth Impoſitions without Aſſent of Parliament, which are *(onera ex voluntate Regis)* to proceed of Preſumption, which doth clearly exclude Claim of Right, and diſproveth the Lawfulneſs of the Act.

But there are divers other notable Paſſages in the Record worthy remarking;

As out of the Word *prægravantur* uſed by the King, we may gather he did account theſe Impoſitions a grievous Burthen to his People, which ſheweth his own Pity of them:

He ſaith further *dolentes referimus*, ſhewing his Grief and Remorſe at it, and *inevitabili neceſſitate compulſi*, he did it conſtrained by inevitable Neceſſity, ſhewing he was forced to it againſt his Will, by that which violateth and breaketh all Law, which inferreth he would not maintain his Action by Law.

Adhuc relevare non valemus:

This inſinuates, he would eaſe them in good Time. *Caritatem exhiberent*, they ſhould afford him Charity in the bearing of them, as if ſo be in Point of Juſtice or Right they need not. *Penes eundem excuſetis*, the Biſhop ſhould excuſe him to the People.

By this he did clearly leave the Point of Juſtification, and ſo of Right.

Laſtly, He promiſeth he would viſit and comfort them, *beneficiis compenſativis*, he would give them Recompenſe for thoſe Sums he had raiſed of them, which ſhewed that he claimed them not as due, for then he needed not give Recompenſe for them.

Rot. Parl. 21 Edw. III. No. 16.

In the twenty firſt Year of *Edward* III, a Petition was exhibited in Parliament, That Levies be not made by Commiſſion (ſo they be in this Caſe) nor other things laid upon the People, unleſs they be granted in Parliament:

The King's Anſwer is,

"If any ſuch Impoſitions were made, it was by great Neceſſity, "and with the Aſſent of the Prelates, Barons, and ſome of the Com-"mons preſent."

Yet he will not that ſuch Impoſitions, not duly made, be drawn in Conſequence.

Here the King acknowledgeth an Impoſition not to be duly made though with the Conſent of the higher Houſe, and ſome of the Commons, becauſe it was not in full Parliament, much rather he would have thought ſo, if it had been by the King alone.

King *Edward* IV. who was a rough and warlike Prince, and was more beholden to his Sword in the Recovery of his Right to the Crown, than to the Affection of his People, at a Parliament held the ſeventh Year of his Reign, made a Speech to the Commons, Sir *John Say* being then Speaker, in which Speech is contained very notable Matter, and very pertinent to our Purpoſe; and becauſe the Record is not in Print, I will will ſet down the King's Speech *verbatim*, as it is entered upon the Parliament *Roll*, and then I will make a Paraphraſe upon it.

JOHN

JOHN SAY, and ye Sirs, come to this my Court of Parliament for the Commons of this my Realm: Rot. Parl. 7 Edw. IV. *The Record begins* Memorandum quod die Veneris 3 die Parliament.

The Cauſe why I have called and ſummoned this my preſent Parliament is, that I purpoſe to live upon my own, and not charge my Subjects but in great and urgent Cauſes, concerning more the Weal of themſelves, and alſo the Defence of them, and of this my Realm, rather than my own Pleaſure, as heretofore by Commons of this Land have been done and born unto my Progenitors in Time of Need, wherein I truſt that ye, Sirs, and all the Commons of this my Land, will be as kind and tender me in ſuch Caſes, as heretofore any Commons have been to any of my Progenitors.

And for the Good-will, Kindneſs, and true Hearts that ye have born, continued, and ſhewn to me at all Times heretofore, I thank you as heartily as I can:

Alſo I truſt ye will continue in Time coming, for which by the Grace of God I ſhall be to you as good and gracious a King, and reign as righteouſly over you as ever did any of my Progenitors upon Commons of this my Realm in Days paſt; and ſhall alſo in Time of Need, apply my Perſon for the Weal and Defence of you and of this my Realm, not ſparing my Body nor Life for any Jeopardy that might happen to the ſame.

Out of this we obſerve *Firſt*, The King's Proteſtation to live of his own, and not to charge his Subjects; by which we gather he did acknowledge a certain and diſtinct Property of that which was his Subjects, from that which was his own, which excludeth the Right to impoſe all his Will; for if that be admitted, the Subjects Property is *proprietas precaria*, not certain how much of his is his own:

For that is his which the King will leave him, for there is no Limit or Reſtraint of the Quantity, the Right being admitted, but only the King's Will.

The *Second* Thing I obſerve is this; That in charging of his Subjects, he would confine himſelf between theſe two Bounds;

The *one*, it ſhould be in great and urgent Cauſes, concerning more the Weal of them, and the Defence of them and his Realm, than his own Pleaſure, wherein he condemneth thoſe Occaſions that grew upon Exceſs of private Expence by over great Bounty, or otherwiſe, and admitteth only ſuch as grew by reaſon of Wars, or other ſuch publick Cauſes, concerning the whole State:

The *other* Bound or Limit is, That theſe Burthens ſhould be *ſecundum morem majorum*, as heretofore had been done and born by the Commons to his Anceſtors in Time of Need.

The

The *Third* Thing I obſerve is, That he acknowledged theſe Burthens did proceed out of their Good-will and Kindneſs, not out of his Right and Prerogative, out of theſe Words, That he truſted they would be as tender and kind to him in ſuch Caſes, as heretofore any Commons had done to his Progenitors.

And laſtly, We may note the Recompenſe promiſed by the King to his Subjects for their Good-will and Kindneſs, his Goodneſs and Grace, his juſt and righteous Government, the Jeopardy of his Body and Life for their Weal and Defence.

Did this King aſſume to himſelf a Right to lay Burthens on his Subjects at his own Will, without their Aſſents, that offered to buy them at their Need with the Price of his Blood, the moſt ſacred Relick in the Kingdom?

IV. My *Fourth* Obſervation is, That in all Petitions eſtabliſhed by the Commons in Parliament againſt the Impoſitions, the very Knot of their Grief, and the principal Cauſe of their Complaint has been expreſſed in thoſe Petitions, that the Impoſitions have been without Aſſent of Parliament, by which is neceſſarily inferred, that their Grief was in Point of Right, not of Burden.

In 21 *Edward* III. N°. 11. The Complaint of the Impoſition of Two Shillings upon a Sack of Wool, Two Shillings upon a Ton of Wine, Six Pence upon *Aver du Pois*, the Cauſe of Grievance expreſſed, becauſe it was *ſans aſſent de Comuns*.

25 *Edward* III. N°. 22. in a Petition the Commons complain that an Impoſition upon Wools was ſet by the Conſent of the Merchants, they pray, That Commiſſions be not made upon ſuch ſingular Grants, if they be not in full Parliament; and if any ſuch Grants be made, they may be held as void.

17 *Edward* III. N°. 28, the Commons in their Petition inform the King it is againſt Reaſon they ſhould be charged with Impoſitions ſet on by Aſſent of Merchants, and not in Parliament.

V. My *Fifth* Obſervation is, That whenſoever any Petition was exhibited againſt Impoſitions, that there was never any reſpect of the Quantity, but they were ever entirely abated, as well where they were ſmall as where they were great.

No Requeſt ever made to make them, leſs where they were great, no Excuſe made of their Eaſe when they were exceeding ſmall, which ſheweth that it was not the Point of Burden or Exceſs that was reſpected in their Complaint, but the Point of mere Right.

25 *Edward* III. N°. 22. Forty Shillings, ſet an Impoſition upon a Sack of Wool, upon Complaint all taken off, and no Suit to be eaſed of part, becauſe it was too great.

26 *Edward* III. N°. 26. Three Shillings and Four Pence upon a Sack of Wool, all taken off, and no Excuſe made for the Smallneſs:

For 21 *Edward* III. N°. 11. Two Shillings a Sack, Two Shillings Tonnage, and Six Pence Poundage.

50 *Edward* III. N°. 163. A great Complaint was made in Parliament by the Commons, that an Impoſition of a Penny was ſet upon Wools for Tonnage, over and above the ancient Due, which was but a Penny.

And the Subject was charged with Two Pence.

Alſo that a Penny was exacted for Meſonage, which was but an Half Penny; which Impoſitions the Record doth expreſs, did amount to an Hundred Pounds a Year.

This petty Impoſition was as much ſtood upon in point of Right, as the other great one of Forty Shillings, and was taken off upon Complaint in Parliament, without Juſtification or Excuſe for the Smallneſs of it.

VI. My *Sixth* Obſervation is, That thoſe which have adviſed the ſetting on of Impoſitions without Aſſent of Parliament, have been accuſed in Parliament for giving that Advice, as of a great Offence in the State, and have ſuffered ſharp Cenſure and great Diſgrace by it.

Neither do I find that the Quality of the Perſon hath extenuated the Blame, as 50 *Edward* III. *William* Lord *Latymer*, Chamberlain to the King, and of the Privy Council, was accuſed by the Commons in Parliament of divers Deceipts, Extortions, and Miſdeeds, and among other things, that he had procured to be ſet upon Wool, Wool-fels, and other Merchandizes, new Impoſitions; to wit, upon a Sack of Wool Eleven Shillings, which the Lord *Latymer* ſought to excuſe, becauſe he had the Conſent and good liking of the Merchants firſt.

But Judgment was given againſt it, That he ſhould be committed to Priſon, be fined and ranſomed at the King's Will, and be put from being of the Council:

And this procuring of Impoſitions to be ſet on without Aſſent of Parliament, is expreſly ſet down in the Entry of the Judgment for one of the Cauſes of his Cenſure.

Richard Lyons, a Farmer of the Cuſtoms in *London*, the ſame Year was accuſed in Parliament for the ſame Offence. Rot. Parl. 50 Edw. III. N°. 17, 18, 19, 20.

He pleaded he did it by the King's Command, and anſwered the Money to the King's Chamber.

Yet was condemned and adjudged in Parliament to be committed to Priſon, and all his Lands and Goods were ſeized into the King's Hand, and at laſt the Hate againſt the Authors of Impoſitions grew ſo, that 50 *Edward* III. in the ſame Parliament, a Petition was exhibited in

Parliament to make this a capital Offence. The Record is very ſhort, and therefore I will ſet it down *verbatim.*

Item, prie le dit Comun, qe ſoit ordeine per Statut enceſt preſent Parlement, que toutz ceux queux cy enavant mittont ou font pur lour ſinguler profite novelx Impoſitions par lour auctoritee demeſne, Accrochantz al eux en y al pouir de riens que ſoit eſtabli en Parlement ſanz aſſent de Parlement, que ils eyent Juggement de vie & membre & de foris facture.

To this rough Petition the King gave a mild Anſwer:

Cour la Commune Ley, come eſtoit a lavant uſe.

VII. My *Seventh* Obſervation is the Ceſſation between 50 *Edw.* III. after this Cenſure in Parliament, and 4 *Mariæ*, almoſt two hundred Years, during which Time no King did attempt to impoſe without Aſſent of Parliament, and yet we find in the Parliament *Rolls*, that there was not one of thoſe Kings that reigned in that Time, but had Impoſitions granted them upon fit Occaſions by Act of Parliament upon all Goods and Merchandizes, and at divers Times during their Reigns, ſometimes more, ſometimes leſs, upon the Ton and Pound, but ever for a Time certain and definite:

So the Uſe of them was not given over, but the Power of impoſing was ſo clearly and undoubtedly held to be in the Parliament, as no King went about to practice the contrary.

But to this Ceſſation that was of great Weight and Credit in our Evidence, a Colour was given by the other Side to avert the Inference made upon it againſt the King's Right; that is, that during that Time there was ſo great a Revenue grew to the Crown by double Cuſtom paid for all Merchandizes both in *England* and at *Calais*, by reaſon of an Act of Parliament made 8 *Henry* IV, which was that no Goods ſhould be carried out of the Realm but to *Calais*, and by reaſon that Merchants payed Cuſtom both there and here for the ſame Goods, that in the 27th of *Henry* VI. the Cuſtom of *Calais* was Eight Thouſand Pounds the Year; a great Sum, if you conſider the Weight of Money then, what Price it bare, and by reaſon hereof Princes not delighting to charge their murmuring Subjects but when need is, being ſo amply ſupplied otherwiſe, did not put that Prerogavive in Practice.

To this I anſwer, that if that were true that was urged, there might be ſome probable Colour of the Forbearance of impoſing.

But I find it to be quite contrary, and that by Record; for there was no ſuch Reſtraint of all Commodities not to be tranſported to any Place

Place but *Calais*, but only Wools, Wool-fels, Leather, Tin, and Lead, that were Staple Wares; which by the Statute 37 *Edward* III. were to be tranſported thither, and not to any other Place.

And the Staple continued at that Place for the moſt part from that Time, until long after 27 *Henry* VI. But there was no double Cuſtom paid both here and there by the ſame Owner:

But the yearly Profits of the Cuſtoms of *Calais* at thoſe Times were ſo far ſhort of that which hath been alledged in 27 *Henry* VI, that it appeareth in an Act of Parliament 27 *Henry* VI. *cap.* 2. printed in the Book at large, that the Commons do complain, That whereas in the Time of *Edward* III. the Cuſtom of *Calais* was Sixty Eight Thouſand Pounds by Year; at that Time, which was 27 *Henry* VI. by reaſon of the ill Uſage of Merchants, it was fallen to be but Twelve Thouſand Pounds the Year.

So then there was great Cauſe in that reſpect to have ſet on Impoſitions by reaſon of that great Abatement of Cuſtoms, and yet it was not then offered to be done without Aſſent of Parliament.

But if you look a little further into the extreme Neceſſities of thoſe Times, you will find there was never greater Cauſe to have ſtrained Prerogatives.

For it appeareth in an Act of Parliament 28 *Henry* VI, that it was then declared in Parliament by the Chancellor and Treaſurer, who demanded Relief of the People for the King, both for Payment of his Debts, and for his yearly Livelyhood. Three Hundred Seventy Two Thouſand Pounds, which now by the Weight of Money amounteth to Eleven Hundred Thouſand Pounds, and that his ordinary Expences was more than his yearly Revenue by Nineteen Thouſand Pounds yearly.

So that if ever there was Cauſe to put a King to his Shifts it was then:

Yet we ſee they did not venture to put in Practice this ſuppoſed Prerogative.

It further appeareth in that Statute, that the People among thoſe Reaſons they alledged why they were not able to retain the King, gave this for one, that they had ſo often granted him Tonnage and Poundage upon Merchandizes.

By which it appeareth he took nothing of Merchants by Impoſition without Grant, for if he had, no doubt they would not have ſtuck to put him in Mind of it.

But pray conſider what became of this Motion of the Chancellor and Treaſurer.

The Propoſition had depended in Parliament many Years, the Effect was, the People intreated the King to reſume all Grants he had made from the Beginning of his Reign, except ſuch as were made upon

upon Conſideration valuable, that he might ſo enable himſelf by that means by which he had impoveriſhed himſelf and the whole Kingdom.

This took effect, and the Statute of Reſumption was thereupon made the ſame Year.

Which Record, becauſe it is not in print, and declareth theſe things with great Gravity and Authority, I will ſet down the very Text of it, ſo much as is material to our Purpoſe, which is this:

28 Hen. VI. in Turri London, *not printed.*

" Praying your Commons in this your preſent Parliament aſſembled, " to conſider, that where your Chancellor of your Realm of *England*, " and many other Lords of your Council, by your high Command- " ment to your ſaid Commons at your Parliament holden laſt at *Weſt-* " *minſter*, ſhewed and declared this the State of your Realm, which " was that ye were indebted 372000 *l.* which is grievous, and that " your Livelyhood in yearly Value was but 5000 *l.*

" And foraſmuch as the 5000 *l.* to your high and noble Eſtate, to " be kept and to pay your ſaid Debts, will not ſuffice:

" Therefore that your high Eſtate may be retrieved:

" And furthermore it was declared that your Expences neceſſary " to your Houſhold, without all other ordinary Charges, come to " 24000 *l.* yearly, which exceedeth every Year in Expence neceſſary " over your Livelihood 19000 *l.*

" Alſo pleaſeth it your Highneſs to conſider that the Commons of " your ſaid Realm be as willing to their Power for the relieving of " your Highneſs, as ever was People to any King of your Progeni- " tors, that ever reigned in your ſaid Kingdom of *England*; but your " ſaid Commons being ſo impoveriſhed, what by taking Victual to " your Houſhold, and other things in your ſaid Realm, and nought " paid for it, and the Quinſzieme by your ſaid Commons ſo often " granted, and by the Grant of Tonnage and Poundage, and by the " Grant of Subſidy upon Wools, and other Grants to your Highneſs, " and for lack of Execution of Juſtice that your ſaid Commons be " full nigh deſtroyed, and if it ſhould continue longer in ſuch great " Charge, it would not in any wiſe be had nor born.

" Wherefore pleaſeth it your Highneſs the Premiſſes graciouſly to " conſider, and that ye be by the Advice of your Lords Spiritual and " Temporal, and by the Authority of this your preſent Parliament, " for the Conſideration of your high Eſtate, and in Comfort and Eaſe " of your poor Commons, would take, reſume, ſeize, and retain in " your Hands and Poſſeſſion all Honours, *&c.*"

This was very plain dealing by the People with their King:

And this is the Succeſs of the Demand of Supply and Support had in thoſe Days, being required in Point of Gratification, without any Recompenſe or Retribution for it.

Thus

Thus then we have cleared this Point, that between 50 *Edward* III. and 4 *Mary*, there was not one Impoſition ſet without Aſſent of Parliament.

Queen *Mary* in the fourth Year of her Reign upon the Wars with *France*, ſet an Impoſition upon Clothes, for the Conſideration that the Cuſtom of Wools was decayed, by reaſon for the moſt part they were made into Clothes, which afforded little Cuſtom:

For that which in Wool payed for Cuſtom and Subſidy Forty Shillings, made into Cloth paid but Four Shillings and Four Pence.

To recompenſe this by an indifferent Equality, there was ſet upon a Cloth Five Shillings and Six Pence, which Impoſition did not make up the Loſs ſuſtained in the Cuſtom of Wool by Thirteen Shillings and Four Pence in Forty Shillings.

This was *juſtum*, but not *juſte*.

This religious Prince, environed with infinite Troubles in the Church and Common-wealth, and much impoveriſhed by her Devotion in renouncing the Profits of the Church Lands that were in the Crown by the Suppreſſion, was the firſt that made Digreſſion from the Steps of her worthy Progenitors, in putting on that Impoſition without Aſſent of Parliament; for that very Conſideration of the Loſs of Cuſtom, by turning of Wool into Clothing, came into Treaty the twenty fourth Year of *Edward* III, when the Act of Clothing begun firſt to be much practiſed in this Kingdom, and then in the Recompenſe of the Loſs ſuſtained in the Decay of Cuſtom of Wools, there was ſet upon a Cloth by Act of Parliament, above the old Cuſtom, One Shilling and Four Pence.

This is recited in a Record in the *Exchequer*, 48 *Edward* III. *Rot.* 2. *Rem. Theſ. in Origin.*

But I pray you examine how this Suppoſition of Queen *Mary* was digeſted by the People:

We ſee in the Caſe in my Lord *Dyer*, 1 *Eliz. fol.* 165. *a.* N°. 5. that the Merchant found great Grief at it, and made Exclamation and Suit to Queen *Elizabeth*, to be unburdened of it.

The very Reaſon of their Grief expreſſed in that Caſe, is becauſe it was not ſet on by Parliament, but by the Queen's abſolute Power; ſo that was the Ground of that Complaint, the very Point of Right.

This Caſe was referred to all the Judges, to report whether the King might ſet on this Impoſition without Aſſent of Parliament:

They divers Times had Conference about it, but have not yet made Report for the King, which is an infallible Preſumption that their Opinions were not for him.

For it is a certain Rule among us, that if a Queſtion concerning the King's Prerogative, or his Profits, be referred to the Judges, if their

Opinion be for the King, it will be ſpeedily publiſhed, and it were Indiſcretion to conceal it; but if there be no Publication, then we make no doubt but either their Opipions are againſt the King, or at leaſt they ſtick and give none for him.

The ſame Queen *Mary*, upon Reſtraint of bringing in *French* Commodities, occaſioned by the then Wars with *France*, ſet an Impoſition on *Gaſcoign* Wines, which continueth yet.

So the Kingdom of *England*, by the Injuſtice of that Prince, was charged with theſe two heavy Impoſitions contrary to the Right of the Kingdom, and the Acts of her Progenitors.

Queen *Elizabeth* ſet on that upon Sweet Wines, which grew alſo upon the Occaſion of the Troubles with *Spain*.

That upon Allom was none, it was rather a Monopoly to Mr. *Smith*, the Cuſtomer of *London*, for the ingroſſing of all Alloms into his own Hands, for which Privilege he gave a voluntary Impoſition upon that Commodity.

It was like the Privilege granted to *John Pechey* of the Sweet Wines by *Edward* III, for which the Patentee was called into the Parliament Houſe 50 *Edward* III, and was there puniſhed, and his Patent taken away and cancelled.

What Impoſitions have been ſet on in the King's Time I need not expreſs; they are ſet down particularly in the Book of *Rates*, that is in Print, they are not eaſily numbered.

The Time for which they are raiſed is not ſhort;

The Patent prefixed to that Book bearing Date 28 *July*, 6 *Jacobi*, will inſtruct you ſufficiently in that Point; they be limited to the King, his Heirs and Succeſſors, which I ſuppoſe is the firſt Eſtate of Fee Simple of Impoſitions that ever Man read of.

VIII. My *Eighth* and laſt Obſervation is upon Tonnage and Poundage given to the King of this Realm upon Wares and Merchandizes exported and imported, which is an Impoſition by Act of Parliament, and as it will appear was given out of the Peoples Good-will, as a very Gratification to the King, to enjoin him thereby from the Deſire of voluntary Impoſitions, and to conclude him by that Gift in Parliament from attempting to take any other, without Aſſent of Parliament.

For after the ceaſing of voluntary Impoſitions, theſe Parliamentary ones were frequent in the Times of the Kings that ſucceeded; but they were never given but for Years, with expreſs Caution how the Money ſhould be beſtowed, as towards the Defence of the Seas, Protection of Traffick, or ſome ſuch other publick Cauſes, ſometimes ſpecial Sequeſtrators made by the Act of Parliament, by whoſe Hands

the Money ſhould be delivered, as 5 *Richard* II. *cap.* 3. in a printed Statute.

The Rates that were given were very variable, ſometimes Two Shillings Tonnage, and Six Pence Poundage; as 7 *Rich.* II. Three Shillings Tonnage, and One Shilling Poundage, 10 *Rich.* II. which Grants were not to endure the longeſt of them above a Year; One Shilling and Eight Pence Tonnage and Six Pence Poundage, granted to *Henry* IV. in the 13th Year of his Reign for a certain Time: In which Statute there is this Clauſe:

Rot. Parliam. 7 Rich. II. N° 13. 10 Rich. II. N° 12. 17 Rich. II. N° 12.

That this Aid in time to come ſhould not be taken in Example, to charge the Lords and Commons in manner of Subſidy, unleſs it be by the Lords and Commons, and that by a new Grant to be made in full Parliament in Time to come.

This Clauſe in good and proper Conſtruction may be taken to be a very Convention between the King and his People in Parliament, that he ſhould not from thenceforth, nor any of his Succeſſors, ſet on Impoſitions without Aſſent of Parliament.

The like Impoſition was granted to *Henry* V. in the firſt Year of his Reign for a ſhort Time, towards the Defence of the Realm, and Safeguard of the Sea, upon Condition expreſſed in the Act, That the Merchants, Denizens, and Strangers coming into the Realm with their Merchandizes, ſhould be well and honeſtly uſed and handled, paying the ſaid Subſidy, as in the Time of his Father and his noble Progenitors Kings of *England*, without Oppreſſion or Extortion.

Rot. Parliam. 1 Hen. V. N° 17.

In the End of which Act the Commons proteſted, being bound by any Grant in Time to come for the Purpoſes aforeſaid.

Henry VI. in the thirty-firſt Year of his Reign, had Tonnage and Poundage given him for his Life.

Rot. Parliam. 31 Hen. VI.

Edward IV. had it given him the third Year of his Reign, as it appeareth in a Statute 12 *Edw.* IV. *cap.* 3.

12 Edw. IV. cap. 3.

Henry VIII. in the ſixth Year of his Reign, and all ſince in the firſt Year of their Reigns; and have it given them for Term of their Lives: And being now ſo certainly ſettled in it, do reach farther at that from which they are in Conſcience and Honour excluded by this voluntary Gratification.

6 Hen. VIII. cap. 22. 1 Edw. VI. cap. 13. 1 Ma. cap. 18. 1 Eliz. cap. 19. 1 Jac. cap. 33.

For can any Man give me a Reaſon why the People ſhould give this Impoſition of Tonnage and Poundage upon the due Cuſtom upon all Commodities, if the King by his Prerogative might ſet on Impoſitions without Aſſent of Parliament:

And were not that a weak Action in a King, to take that of his People as a Benevolence from them, with Limitation of the ſame, and in what it ſhould be employed, and how they will be uſed for it, and for what Time he ſhall have it; which he might juſtly take

take without their Conſents unclogged of theſe unpleaſing Incumbrances.

The Statute of Tonnage and Poundage made in our Times that are altogether inclined to Flattery, do yet retain in them certain Shews and Rumours of thoſe ancient Liberties, although indeed the Subſtance be loſt; as in the Statute 1 *Jac. cap.* 33. "We declare that "we truſt and have ſure Confidence of his Majeſty's Good Will to- "wards us, in and for the keeping and ſure defending of the Seas; "and that it will pleaſe his Highneſs, that all Merchants, as well "Denizens as Strangers, coming into this Realm, be well and ho- "neſtly treated and demeaned for ſuch Things whereof Subſidy is "granted, as they were in the Time of the King's Progenitors and "Predeceſſors, without Oppreſſion to them to be done."

By this Clauſe, as it now continueth, the true Intent of this Statute appeareth to be, that there ought to be no other Impoſition laid upon Merchants, beſides theſe given by this Statute; and this Intention hath been well interpreted by Uſe and Practice, from the Time of *Edward* III. to the Time of Queen *Mary*, as is before declared.

Thus much of the laſt Reaſon made from Obſervation, and the Action of our Nation.

I will anſwer now ſuch main Objections as have been made againſt the People's Right, and have not been touched by me *obiter* in my Paſſage through this Diſcourſe.

That which hath been moſt inſiſted upon is this, That the King by his Prerogative Royal hath the Cuſtody of the Havens and Ports of this Iſland, being the very Gates of this Kingdom: That he in his Royal Function and Office is only truſted with the Keys of theſe Gates: And that he alone hath Power to ſhut them and to open them, when and to whom he in his Princely Wiſdom ſhall ſee good.

That by the Law of *England* he may reſtrain the Perſons of any from going out of the Land, or from coming into it.

That he may of his own Power and Diſcretion prohibit Exportation and Importation of Goods and Merchandizes, and out of this Prerogative and Preheminence, the Power of impoſing, as being derivative, doth ariſe and reſult: For,

Cui quod majus eſt licet & ei quod eſt minus licitum eſt.

So their Reaſon briefly is this, The King may reſtrain the Paſſage of the Perſon and of the Goods; therefore he may ſuffer them not to paſs, but *ſub modo*, paying ſuch an Impoſition for his Sufferance as he ſhall ſet upon them.

For

For the Grounds and Propoſitions laid in this Objection, I ſhall not be much againſt any one of them; others muſt be qualified e'er they be confeſſed; but the Inference and Argument made upon them I utterly deny.

For in it there is *Mutatio Hypotheſis*, and a Tranſition from a Thing of one Nature to a Thing of another.

As the Premiſſes are of a Power in the King only fiduciary, and in Point of Truſt and Government, the Concluſion infers a Right of Intereſt and Gain.

Admit the King hath *Cuſtodiam Portuum*, yet he hath but the Cuſtody, which is Truſt, and not *Dominium utile*.

He hath Power to open and ſhut upon Conſideration of publick Good to the People and State, but not to make Gain and Benefit by it:

The one is Protection,

The other is Expilation.

Portus ſunt publici.

The Ports in their own Nature are publick, free for all to go in and out, yet for the common Good.

This Liberty is reſtrainable by the Wiſdom and Policy of the Prince, who is put in Truſt to diſcern the Times when this natural Liberty ſhall be reſtrained.

In 1 *Henry* VII. *fol.* 10. in the Caſe of the *Florentines*, for their Allom, the Lord Chief Juſtice *Huſſey* doth recite a Caſe, that in the Time of *Edward* IV. a Legate from the Pope being at *Calais* to come into *England*, it was reſolved in full Council (as the Book ſayeth) before the Lords and Judges, that he ſhould not have Licence to come into *England*, unleſs he would take an Oath at *Calais*, That he would bring nothing with him that ſhould be prejudicial to the King and his Crown.

The King may ſend his Writ *Ne exeas Regnum* to any Subject of the Realm; but the Surmiſe of the Writ is, *Quia datum eſt nobis intelligi, quod tu verſus partes exteras abſque licentia noſtra clam deſtinas te divertere, & quamplurima nobis & coronæ noſtræ præjudicia proſequi*, Fitzh. *Nat. Br.* 85 *b.* So in Point of Government and common Good of the Realm, he may reſtrain the Perſon: But to conclude therefore he may take Money not to reſtrain, is to ſell Government, Truſt, and common Juſtice, and moſt unworthy the divine Office of a King.

But let us compare this Power of the King in Foreign Affairs, with the like Power he hath in Domeſtick Government;

There is no Queſtion but the King hath the Cuſtody of the Gates of all the Towns and Cities in *England*, as well as all the Ports and Havens; and upon Conſideration of the Weal Publick, may open and ſhut them at his Pleaſure: As, if the Infection of the Sickneſs be dan-

gerous in Places vicine to the City of *London*, the King may command that none from theſe Places ſhall come into the City.

May he therefore ſet an Impoſition upon thoſe that he ſuffereth to come into the City?

So if, by reaſon of Infection, he forbid the bringing of Wares and Merchandizes from ſome Cities and Towns in this Kingdom to any great Fair or Mart,

Shall he therefore reſtrain the bringing of Goods thither, unleſs Money be given him by way of Impoſition?

The King in his Diſcretion, in Point of Equity, and for qualifying the Rigour of the Law, may enjoin any of his Subjects by his Chancellor, from ſuing in his Court in Common Law;

May he therefore make a Benefit by reſtraining all from Suits in his Courts, unleſs they pay him an Impoſition upon their Suits?

In the 2d of *Edward* III. in the Caſe of the Earl of *Richmond* before cited, the King had granted unto the Men of *Great Yarmouth*, That all the Ships that arrived at the Port of *Yarmouth*, which conſiſted of three ſeveral Ports, *Great Yarmouth*, *Little Yarmouth*, and *Gerneſton*, ſhould arrive all at *Great Yarmouth*, and at no other Place within that Port.

The Lawfulneſs of this Patent being in Queſtion in the King's Court, it was reaſoned on the King's behalf, for the upholding of the Grant, as it is now, that the King had the Cuſtody of the Port, he might reſtrain Merchants from landing at all in this Kingdom; therefore out of the ſame Power might appoint where and in what Haven they ſhould land, and in no other.

This Patent was demurred on in the *King's Bench*, as being granted againſt the Law; but the Caſe depending was adjourned into Parliament, for the Weight and Conſequence of it: And there the Patent was condemned, and a Law made againſt ſuch and the like Grants.

9 Edw. III. cap. 1.

The Precedents that were vouched for the Maintenance of this Power of Reſtraint in the King, were Four, produced almoſt in ſo many Hundred Years; whereof Two were in the ſecond Year of *Edward* I. One in the tenth Year of *Edward* III. another in the ſeventeenth Year of *Henry* VI.

Rot. Parliam. 2 Ed. I. m. 16. Rot. Fin. 2 Ed. I. N° 17. Rot. Clauſ. 10 Edw. III. dorſ 31. Rot. Clauſ. 17 Hen. VI. dorſ.

Since which Time we hear of none, but by Act of Parliament, as they had been uſually and regularly before.

To theſe I will give Anſwer, out of themſelves, out of the Common Law, out of divers Statutes, and out of the Practice of the Common-wealth.

The Reſtraint in the Time of *Edward* I. the one of them was to forbid the carrying of Wool out of the Realm; the other was to forbid all Traffick with the *Flemings*.

That

That of 10 *Edward* III. was to reſtrain the Exportation of Ship Timber out of the Realm:

That of 17 *Henry* VI. to prohibit Traffick with the Subjects of the Duke of *Burgundy*.

Theſe Precedents are rare, yet they have in them Inducements out of publick Reſpects to the Common-wealth.

For the Rule of Common Law in this Caſe, I take it to be as the Reverend Judge Sir *Anthony Fitzherbert*, *N. B.* 85. holds it in his Writ of *Ne exeas Regnum in Nat. Br.* That by the Common Law any Man may go out of the Kingdom.

But the King may, upon Cauſes touching the Good of the Common-wealth, reſtrain any Man from going, by his Writ or Proclamation; and if he then go, it is a Contempt.

This Opinion of his is confirmed by the Book 1 *Eliz. fol.* 165. *Dyer.* 12 and 13 *Eliz. Dyer* 296.

In like manner, if a Subject of *England* be beyond Sea, and the King ſend to him to repair Home, if he do it not, his Lands and Goods ſhall be ſeized for the Contempt.

And this was the Caſe of *William de Bretaigne* Earl of *Richmond*: 19 *Edward* II. he was ſent by the King into *Gaſcoigne* on a Meſſage, and refuſed to return; for which Contempt his Goods, Chattels, Lands and Tenements were ſeized into the King's Hands.

The Record is cited in the 2d and 3d of *Philip* and *Mary*, in my Lord *Dyer*, *fol.* 128. *b.* and the Law there held to be ſo at that Time upon a Queſtion moved in the Queen's behalf, againſt divers, that being beyond the Seas refuſed to return upon Commandment ſent unto them to that Purpoſe.

The ſame is again for Law confirmed in the Caſe of the Ducheſs of *Suffolk*, 2 *Eliz. Dyer* 176.

But the Common Law was altered in this Point by the Statute of 5 *Richard* II. by which the Paſſage of all People is defended, that they may not go without Licence, except the Lords and other great Men of the Realm, Merchants and Soldiers.

So for the Merchants, which are the People dealt withal in the Buſineſs in hand, the Common Law remaineth as it did before the Statute. And ſo it was held 12 *Eliz. Dyer* 196. where the Caſe was,

An *Engliſh* Merchant, being a Papiſt, went over Sea, and being there, did ſettle himſelf to remain there for enjoying the Freedom of his Conſcience:

It was moved here in *England*, that his going without Licence ſhould be a Contempt, becauſe he went not to traffick as a Merchant, but for the Cauſe of Religion.

It was reſolved that no ſuch Averment would be taken in this Caſe; for that the very Calling and Vocation of being a Merchant did give him Liberty to go out of the Kingdom when he would: And therefore his ſecret Intent of going away was not to be enquired after; *Sed Lex inſpicit quod veriſimile.*

Therefore in this Caſe it was held no Contempt; but at this Day the Law is as it was before 5 *Richard* II. For that Statute is repealed 4 *Jac. cap.* 1.

And all Men whatſoever are now at Liberty by the Common Law to paſs out of the Realm.

There is only againſt this inconvenient Liberty a Proclamation dated at *Weſtminſter*, 19 *Jul.* 5 *Jac.* to the very ſame Effect in Point of Reſtraint of Paſſage with the Statute of *Richard* II. So the Subject is in this much the more at Eaſe and Liberty than he was before.

That his going over Sea without Licence, doth not incur any Forfeiture, but only incurreth the Cenſure of a Contempt; and therefore it were to be wiſhed, that ſome firm Law might be made in the Caſe, both for the Execution of ſo good a Point of Policy, and for the more Quiet of the State, in knowing the Certainty of the Puniſhment for the Offence.

This Liberty and Freedom of Merchants hath been ſtrengthened and confirmed by many notable Laws recited; as, 14 *Edw.* III. *Stat.* 2. *cap.* 2. 15 *Edw.* III. *Stat.* 2. *cap.* 5. 13 *Edw.* III. *Stat.* 1. *cap.* 3. and divers other.

And therefore, though it be admitted, that the King may reſtrain Perſons and Goods, yet it may well be denied, that he hath Power of himſelf alone, without Aſſent of Parliament, ſimply and indefinitely to reſtrain all Traffick in general, or to ſhut up all the Havens and Ports, and to bar the Vent and Iſſuing of Wares and Merchandizes of the whole Kingdom, as it appeareth plainly, that this hath been done theſe three hundred Years or near thereabouts, by Act of Parliament only:

And that the Kingdom of *England* made this Matter of Traffick ſo tender a Caſe to deal in, as that it hath ever held it a Matter fit for the Conſultation of the Great Council of the Kingdom, and for no other.

In the 11th of *Edward* III. the Exportation of Wools was prohibited by the Act of Parliament, in which Statute there was this Clauſe: *Until that by the King and his Council it be thereof otherwiſe provided.*

Which Power ſo given to the King to be uſed for the Good of the Common-wealth, gave occaſion to him to abuſe it to his Profit and Commodity, by giving Licences of Tranſportation to all that would

would give Forty Shillings upon a Sack of Wool above the due Cuſtom.

This appeareth in the Records in the *Exchequer*, 13 *Edward* III. *Rot.* 2. *Rem. Theſ.*

I will deſcribe the Record, that you may perceive the Ground of it the better:

Rex Collectoribus Cuſtumæ in Portu Magnæ Jermouth, ſalutem. Quia conceſſimus dilecto & fideli noſtro Hugoni de Wriotheſley, quod ipſe viginti & ſeptem ſaccos Lanæ & dimid. de Lanis ſuis propriis in Portu prædicto cariare, & eos uſque Antwerp ad Stapulam noſtram ibidem ducere poſſit, ſolvendo ibidem dilecto Clerico noſtro Willielmo de Northwell, cuſtodi Guarderobæ noſtræ 40 *s. pro quolibet ſacco pro Cuſtuma & Subſidio inde nobis debitis, &c. Vobis mandamus quod prædictum Hugonem dictos viginti ſeptem ſaccos Lanæ & dimid. in Portu prædicto cariare permittatis, &c.* 13 Edw. III. Rot. 12. R. Th.

And another the ſame Year:

Rex Collectionibus Cuſtumæ, &c. Cum nuper ordinaverimus quod paſſagium Lanarum, &c. apertum exiſteret, & quod Sigillum noſtrum quod dicitur Coket, *quod prius claudi & ſub ſera cuſtodiri mandavimus, aperiretur & apertum teneretur: Ideo vobis mandamus quod Sigillum prædictum in Portu prædicto aperiri & apertum teneri faciatis; & omnes illos qui hujuſmodi Lanas cariare & ducere velint permittatis, receptis prius ab iiſdem, videlicet, de Mercatoribus & aliis Indigenis,* 40 *s. de quolibet ſacco Lanæ.*

Divers other ſuch Sales of Traffick, occaſioned by this Parliamentary Reſtraint, were made between 11 *Edward* III. that the Reſtraint was made; and 14 *Edward* III. that this Inconvenience being eſpied, the Sea was opened by Statute, and the Reſtraint removed, 14 *Edward* III. *Stat.* 2. *cap.* 2. 15 *Edward* III. *cap.* 5. *Stat.* 2.

And this Forty Shillings ſo exacted was complained of as an Impoſition in Parliament; and the Occaſion and the Effect were both taken away together by Act of Parliament 14 *Edw.* III. *Stat.* 1. *cap.* 21. and *Stat.* 2. *cap.* 1.

It followed in all Kings Times ſince the Death of *Edward* III. that this opening and ſhutting of the Havens, reſtraining and enlarging of Traffick, was done by Act of Parliament.

I will give one Inſtance in the Reign of every King:

5 *Rich.* II. *cap.* 2. *Stat.* 2. For the Paſſage of Wool, Wool-fels, and Leather.

6 *Hen.* IV. *cap.* 4. For the Traffick and Commerce with Merchants Aliens.

2 *Hen.* V. *cap.* 6. *Stat.* 2. For the Reſtraint of Staple Commodities to Places certain; and for the Traffick of the Merchants of the Weſt.

27 *Hen.* VI. *cap.* 1. That is enacted in Parliament, which is contained in the Proclamation, 17 *Hen.* VI. cited for a Precedent; that is,

Becauſe the Duke of *Burgundy* made an Ordinance whereby the Traffick of the *Engliſh* Nation was reſtrained, That therefore the *Engliſh* Men ſhould not traffick with the Subjects of the Duke of *Burgundy*.

The ſame enacted upon the like Occaſion, 4 *Edw.* IV. *cap.* 1.

19 *Hen.* VII. *cap.* 21. The Importation of divers Commodities forbidden, as being prejudicial to the Manufactures within the Realm.

6 *Hen.* VIII. *cap.* 12. The Exportation of *Norfolk* Wools out of the Realm forbidden.

26 *Hen.* VIII. *cap.* 10. Power is given to the King to order and diſpoſe of the Traffick of Merchants at his Pleaſure: And the Reaſon is given, becauſe otherwiſe the Leagues and Amities with Foreign Princes might be impeached by reaſon of Reſtraint made by divers Statutes then ſtanding on foot; whereby it appeareth, that it was not then taken for Law, that the King had not an abſolute Power in himſelf to order and diſpoſe of the Courſe of Traffick without Help of a Statute.

2 *Edw.* VI. *cap.* 9. Exportation of Leather reſtrained.

1 and 2 *Phil.* & *Mar.* The Exportation of Herring, Butter, Cheeſe, and other Victuals forbidden.

18 *Eliz. cap.* 8. The Exportation of Tallow, raw Hides, and Leather.

So in all Times no uſe of Proclamations in Matters of this Nature, but Acts of Parliament ſtill procured.

Wherefore, in mine Opinion, it behoveth them that do ſo earneſtly urge this Argument, *The King may reſtrain Traffick, therefore may impoſe*, to prove better than they have done, that the King may reſtrain Traffick of his own abſolute Power.

For as the natural Policy and Conſtitution of our Common-wealth is, we may better ſay, That is Law which is *De more Gentis*, than that which followeth from the Reaſon of any Man guided by his general Notion and Apprehenſion of Power Royal, *in genere*, not *in individuo*.

The laſt Aſſault made againſt this Right of the Kingdom was an Objection grounded upon Policy and Matter of State; as, that it may ſo fall out, that an Impoſition may be ſet by a Foreign Prince, that may wrong our People; in which Caſe the Counterpoiſe is to ſet on the like here on the Subjects of that Prince; which Policy, if it be not ſpeedily executed, but ſtayed until a Parliament, may in the mean time prove vain and idle, and much Damage may be ſuſtained that cannot afterwards be remedied.

This Strain of Policy maketh nothing to the Point of Right: Our Rule is in this plain Common-wealth of ours, *Oportet neminem eſſe ſapientiorem Legibus.*

If there be an Inconvenience, it is fitter to have it removed by a lawful Means than by an unlawful.

But this rather a Miſchief than an Inconvenience, that is a Prejudice in preſent to ſome few, but not hurtful to the Common-wealth: And it is more tolerable to ſuffer an Hurt to ſome for a ſhort Time, than to give way to the Breach and Violation of the Right of the whole Nation:

For that is the true Inconvenience; neither need it be ſo difficult or tedious to have the Conſent of the Parliament, if they were held as they might or ought to be.

But our ſureſt Guide in this will be the Example of our Anceſtors in this very Caſe, and that in the Time of one of the moſt politick Princes that ever reigned in the Kingdom, 7 *Hen.* VII. *cap.* 7. you ſhall find an Act of Parliament, in which it was recited, That the *Venetians* had ſet upon the *Engliſh* Merchants that laded Malmeſies at *Candia*, four Duckets of Gold upon a Butt, which in Sterling was Eighteen Shillings the Butt:

It was therefore enacted, That every Merchant Stranger that brought Malmeſy into this Kingdom, ſhould pay Eighteen Shillings the Butt, over and above the due Cuſtom uſed:

This Impoſition to endure until they of *Venice* had ſet aſide that of Four Duckets the Butt upon *Engliſhmen*.

Much hath been learnedly uttered upon this Argument in the Maintenance of the People's Right, and in anſwering that which hath been preſſed on the contrary: But my Meaning is not to expreſs in this Diſcourſe, all that hath or may be ſaid on either Side; but only to make a Remembrance ſomewhat larger of that which I myſelf offered as my *Symbolum* towards the making up of this great Reckoning of the Common-wealth; which, if it be not well audited, may in time coſt the Subjects of *England* very dear.

My Hope is of others that laboured very worthily in this Buſineſs, that they will not ſuffer their Pains to die; and therefore I have forborn to enter into their Province.

I will end with that Saying of that true and honeſt Counſellor *Philip Comines*, Book 5. Chap. 18.

"That it is more honourable for a King to ſay, *I have ſo faithful* "*and obedient Subjects, that they deny me nothing I demand*; than to "ſay, *I levy what me liſt, and I have Privileges ſo to do.*

"And thoſe Courtiers (adds he) that preach any other Doctrine, do "not a little miſtake the Intereſts of their Maſters; and are ſo far from "exalting their Grandeur and Prerogative, that they make them indeed "no Kings."

Now he that ſhall well conſider this Argument, will obſerve two Things:

Firſt,

First, That it juſtifies the Truth and Legality of the Commons Remonſtrance againſt Impoſitions.

Secondly, And whoſoever will fairly compare this Argument with the Report of *Bates*'s Caſe, adjudged by the Barons in the *Exchequer* for the King, muſt be ſufficiently convinced of the Truth of what that excellent and learned Perſon and my honoured Friend the late Lord Chief Juſtice *Vaughan* obſerved in *Sheppard* and *Goſnold*'s Caſe.

Vaughan's Reports, fol. 161.

His Words are theſe:

" Upon a Queſtion raiſed upon occaſion of a new Impoſition laid " by Queen *Mary* upon Clothes, the Judges being conſulted about it " 1 *Eliz.* the Book is,

" *Nota*, That *Engliſh* Merchants do not pay at Common Law any " Cuſtom for any Wares or Merchandizes whatever, but Three; " that is, Wool, Wool-fels, and Leather: That is, *pro quolibet Sacco* " *Lanæ continente* 26 *pierres & cheſcun, pier* 14 *pound un demy Mark*; " and for three hundred Wool-fels, half a Mark; and for a Laſt of " Leather, Thirteen Shillings and Four Pence: And that was equal " to Strangers and *Engliſh* Merchants."

This was in thoſe ſeveral Reigns the Opinion of all the Judges of the Times:

Whence we may learn, how fallible even the Opinion of all the Judges is, when the Matter to be reſolved muſt be cleared by Searches not common, and depends not upon Caſes vulgarly known by Readers of the Year Books.

For ſince theſe Opinions, it is known theſe Cuſtoms called the *Old* or *Antiquæ Cuſtumæ*, were granted to King *Edward* I. in the third Year of his Reign by Parliament, as a new Thing; and was no Duty belonging to the Crown by the Common Law.

But the Act of Parliment itſelf, by which this Cuſtom was granted, is no where extent now, but undeniable Evidence of it appears.

Thus ſpake the Reverend Chief Juſtice of the *Common Pleas*, whom none can deny to have been a great Maſter of the Knowledge of ancient Records and Hiſtorians, as of the general Law itſelf, and by Conſequence a proper Judge to determine what was, and what was not, the Prerogative of the Crown, both by the Common and Statute Laws of the Kingdom.

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FINIS.